Suzannah Helen Harvey & Anor v Langkawi Yacht Club Bhd

HIGH COURT (KUALA LUMPUR) — ADMIRALTY IN PERSONAM NO WA-27NCC-69–09 OF 2019
ATAN MUSTAFFA J
20 NOVEMBER 2022

Contract — Breach — Action for damages — Causation and remoteness — Contract for supply of fuel for vessel — Allegation that defendant supplied contaminated fuel — Claims for direct and consequential loss arising from contaminated fuel — Whether defendant had breached contract — Whether losses naturally arose from breach or were within contemplation of parties at time of contract formation — Contracts Act 1950 s 74

Sale of Goods — Goods sold and delivered — Fitness for purpose — Parties entered into contract for supply of fuel for vessel — Allegation that defendant supplied contaminated fuel — Whether defendant failed to supply fuel that was of good quality and fit for intended purpose — Whether defendant breached s 16 of the Sale of Goods Act 1957 by supplying contaminated diesel fuel, leading to damage to plaintiffs' vessel — Sale of Goods Act 1957 s 16

Tort — Negligence — Breach of duty — Breach of duty of care — Claim for damages — Causation and remoteness — Parties entered into contract for supply of fuel for vessel — Allegation that defendant supplied contaminated fuel — Claims for loss of use of vessel — Claims for damages for assault on feelings, mental distress, anxiety, frustration, disappointment, discomfort, inconvenience and loss of enjoyment — Whether defendant breached implied duty of care — Whether defendant breached its duty of care to supply good quality fuel resulting in damage to plaintiffs' vessel

The dispute between the parties herein could be gleaned from the plaintiffs' notice of demand dated 25 July 2019 to Langkawi Yacht Club Bhd ('the defendant') claiming that the Royal Langkawi Yacht Club ('RLYC') had supplied contaminated diesel fuel from the RLYC Marina fuel pump to their vessel, causing substantial loss and damage. In the same notice of demand, the plaintiffs demanded a payment of USD1,380,663.75 for the fuel cost and consequential losses. The defendant disputed the plaintiffs' claim, hence, the plaintiffs proceeded with the present action for the following reliefs: (a) damages amounting to USD193,959.19 for all loss expense and damage suffered by the plaintiffs as a result of the use of the contaminated fuel supplied by the defendant to be assessed by the court; (b) damages for the loss of use of

the vessel from 20 July 2018–30 September 2019; and (c) damages for assault on feelings, mental distress, anxiety, frustration, disappointment, discomfort, inconvenience and loss of enjoyment. The issues arose were: (i) whether the vessel indeed sustained the damage as claimed; (ii) whether this damage was caused by contaminated fuel, specifically diesel fuel mixed with saltwater; (iii) whether there were other possible causes of the damage that were beyond the reasonable contemplation or control of the defendant, and not related to the fuel from the RLYC Marina fuel pump; (iv) whether the defendant supplied the contaminated fuel from the RLYC Marina fuel pump; (v) whether the plaintiffs acted reasonably to mitigate their losses and damages; and (vi) whether the plaintiffs indeed suffered the loss and damages as claimed. All in all, the central question for the court's determination was whether based on the evidence presented, the defendant could be held liable for either breaching a contract or committing negligence. In this regard, the court had to consider the following questions: (A) whether the defendant breached an implied duty of care and/or s 16 of the Sale of Goods Act 1957 ('the SOGA') by supplying contaminated diesel fuel, leading to damage to the plaintiffs' vessel; and (B) whether the defendant breached its duty of care in supplying good quality fuel, resulting in damage to the plaintiffs' vessel.

Held, allowing the plaintiffs' claim with costs of RM100,000 to the plaintiffs subject to allocator fees:

(1) The court found that the vessel did indeed sustain considerable damage following the refueling at the RLYC Marina. This finding was premised on the following evidence: (a) the observation by the vessel's crew ('PW1') which was corroborated by another crew member that approximately 24 hours after utilising the fuel, an abnormal amount of smoke was observed emanating from the exhaust; (b) the finding by the vessel's engine service engineer ('PW7') that the damage, ie, heavy black smoke from the engine exhaust, an unusual knocking sound from the engine cylinders, an increase in engine oil, and blocked fuel filters, was typical of what occurred when contaminated fuel entered an injector pump; (c) the finding by an electrical mechanic engineer with over 30 years of experience known as Sean Griffin ('PW5') who noted the failure of the Northern Lights generator, the non-functionality of the 120 amp alternator, and the failure of the Automatic Voltage Regulator (AVR); (d) the surveyor's reports dated 30 November 2018 and 1 June 2019 provided by Domnic Alexander ('PW2') which gave a detailed account of the damage; and (e) the invoices from Boustead Langkawi Shipyard Sdn Bhd, detailing the comprehensive repairs and replacements undertaken on the vessel which corroborated the extent of the damage (see paras 19–24).

(2) The court found that the evidence provided by the surveyor, PW5, PW7 as well as the evidence of the defendant's expert known as Klaus Jurgen

Heer ('KJ Heer') who conceded the presence of water in the fuel showed that the damage to the vessel was indeed caused by contaminated fuel, specifically diesel fuel mixed with saltwater. The defendant's arguments, while raising potential alternatives, did not sufficiently undermine the compelling and consistent body of evidence presented by the plaintiffs. The convergence of this evidence, particularly the detailed and corroborative nature of the testing results and expert analyses, firmly established the plaintiffs' case. Therefore, the court concluded that the damage was caused by contaminated fuel (see paras 89, 99, 108–109 & 112).

(3) The defendant posited that the vessel damage might have been caused by factors other than contaminated fuel yet failed to plead any alternative probable cause. In contrast, the plaintiffs provided a coherent and convincing narrative supported by substantial evidence, asserting that the damage was indeed due to contaminated fuel. The defendant's expert, KJ Heer, failed to provide a viable alternative explanation for the water ingress. This lack of direct evidence from the defendant's expert, combined with the plaintiffs' comprehensive and consistent testimonies, led the court to conclude that the only probable cause for the vessel's damage was contaminated fuel, specifically diesel fuel mixed with saltwater. The plaintiffs had successfully demonstrated, through detailed maintenance records, expert testimonies, and logical argumentation, that no other cause was plausible under the circumstances presented (see paras 113 & 117).

(4) The legal framework for assessing causation and remoteness of damage in both contract and tort was indeed pivotal in this case. Section 101 of the Evidence Act 1950 clearly mandated that the plaintiffs bore the burden of proof on a balance of probabilities to establish all elements of the breach of contract and tort. It was incumbent upon the plaintiffs not only to respond to the defendant's defences but also to actively prove their case. They must demonstrate, on the balance of probabilities, that the damage to the vessel was a direct result of the defendant's failure to supply good quality fuel. In deciding the present case, the court referred to the cases of *Vinmar International Ltd and another v Theresa Navigation SA* [2001] 2 All ER (Comm) 243 ('Vinmar'), *Galoo Ltd (in liq) and others v Bright Grahame Murray (a firm) and another* [1995] 1 All ER 16 ('Galoo'), and *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ('Gimpex'). These cases emphasised that establishing causation did not require absolute certainty; rather, it required a determination of what was more likely than not, based on the evidence presented and the application of common sense (see paras 280, 284 & 286).

(5) After a careful and thorough analysis of all the evidence presented, and

applying the *Vinmar*, *Galoo* and *Gimpex* approach of logical and common-sense inference to the facts of the case, the court found that it was more probable than not that the contaminated fuel, which caused significant damage to the vessel, was supplied by the defendant at the RLYC. This finding was based on the sequence of events, the condition and maintenance history of the vessel, the analysis of the contaminated fuel, the defendant's response to the incident, the lack of any alternative explanation for the contamination, and concerns regarding the defendant's operational practices. The plaintiffs had, therefore, successfully discharged their burden of proof on a balance of probabilities (see para 305).

(6) The plaintiffs had demonstrated a diligent and responsible approach to mitigating the losses and damages caused by the suspected contaminated fuel. Their actions were appropriately tailored to the urgent and challenging situation they faced, balancing the need for immediate action with the practical limitations of their circumstances. Therefore, the court found that the plaintiffs fulfilled their duty to mitigate their losses effectively and reasonably under the given circumstances (see paras 306 & 312).

(7) Section 16 of the SOGA implied a condition that goods sold should be reasonably fit for the particular purpose for which they were purchased, provided the buyer made known to the seller the specific purpose for which the goods were required, and relied on the seller's skill and judgment. The court found that the plaintiffs had satisfactorily established the preconditions for the application of s 16 of the SOGA. Firstly, as operators of the RLYC Marina, the defendant was undoubtedly aware of the specific purpose for which the fuel was required, namely for refueling the vessel for her intended voyage. This specific purpose was made known to the defendant when the purchase was made. Secondly, there was a clear reliance by the plaintiffs on the defendant's skill and judgment in supplying quality fuel suitable for the vessel, given the defendant's business of supplying fuel to boaters at an award-winning marina. Thirdly, the defendant was in the regular business of supplying fuel. The evidence presented unequivocally demonstrated that the fuel supplied by the defendant was contaminated, leading to significant damage to the vessel. This contamination and the resultant damage affirmed the defendant's breach of the implied terms under s 16 of the SOGA to supply fuel that was of good quality and fit for the intended purpose (see paras 315, 317–318 & 320).

(8) In the case of *Caparo Industries plc v Dickman and others* [1990] 2 AC 605 ('Caparo'), the court explained that for a duty of care to exist, there must be foreseeability of damage, a legally recognised relationship of 'proximity' or 'neighbourhood' between the parties, and a context in

which it was fair, just, and reasonable for the law to impose such a duty. In the present case, the court found that the defendant owed a duty of care to the plaintiffs. Firstly, as a supplier of diesel fuel to yachts, including the plaintiffs' vessel, it was reasonably foreseeable that supplying contaminated fuel could result in damage to the vessel. Regarding proximity, the relationship between the defendant, as the operator of the RLYC Marina fuel pump, and the plaintiffs, as users of the bunkering services, established a close and direct connection. This satisfied the second element of the *Caparo* test. Thirdly, considering the nature of the relationship and the reliance placed by the plaintiffs on the defendant to supply good quality fuel, it was both fair and reasonable to impose a duty of care on the defendant for the benefit of the plaintiffs. The defendant in the present case had failed to supply good quality fuel to the plaintiffs, hence, the defendant had breached its duty of care. The defendant's actions, or lack thereof, had directly caused the damage to the vessel, leading to their subsequent loss and damages (see paras 324, 326–327 & 329).

(9) Section 74 of the Contracts Act 1950 stated that the party suffering from a breach was entitled to compensation for losses which either naturally arose from the breach or were within the contemplation of the parties at the time of contract formation. This included foreseeable losses directly linked to the breach. Therefore, for the first head of damages — direct and consequential loss arising from the contaminated fuel — this principle was directly applicable. However, the application of tort law principles broadens the scope of recoverable damages. According to Lord Blackburn in *Livingstone v Rawyards Coal Company* (1880) 5 App Cas 25 (HL), the purpose of damages in tort was to place the injured party in the position they would have been in had the wrongful act not occurred. This principle was particularly relevant to the plaintiffs' claims for loss of use of the vessel and non-pecuniary losses (see paras 332–333).

(10) The principle of remoteness of damages applied both in contract and tort. It limited recovery to losses that were foreseeable at the time the contract was made or at the time of the tortious act. Thus, for each head of claim, the court would evaluate whether the defendant could have foreseen that the supply of contaminated fuel would not only lead to the need for repairs but also result in the loss of use of the vessel and cause significant emotional and psychological distress to the plaintiffs. The burden of proof rested on the plaintiff (see paras 334–335).

(11) The court found that the plaintiffs' claims for direct and consequential loss arising from the contaminated fuel amounting to USD193,959.19 were substantiated through a comprehensive collection of documents and financial records. The court further found that the plaintiffs' clarifications and evidence on each disputed item of expense was

persuasive and reasonable. The evidence presented aligned with the logical consequences of the contaminated fuel incident, and the defendant's failure to adequately challenge key aspects of the plaintiffs' claims during cross-examination further reinforced the plaintiffs' position. Therefore, the court ruled in favour of the plaintiffs for the claimed damages and accepted their explanations and evidentiary support over the defendant's objections (see paras 342–343 & 366).

(12) In relation to the claim for loss of use of the vessel, the court found that the plaintiffs were entitled to compensation for the loss of use of their vessel but the claimed period of 63 weeks was excessive and the method of calculating damages based on the cost of chartering a replacement vessel was not reasonable. As per the principles established in *Beechwood Birmingham Ltd v Hoyer Group UK Ltd* [2011] QB 357 (English Court of Appeal), where no substitute vessel was hired, the damages should be calculated based on the interest on the capital value of the vessel. Using the capital value of USD800,000 as per the second plaintiff's advertisement for the vessel's sale and applying an annual interest rate of 5%, the court found it reasonable to award damages for the loss of use for a revised duration of 219 days. Therefore, the court awarded damages for the loss of use of the vessel at USD24,000. This figure reflected a balanced consideration of the plaintiffs' loss and the need to avoid disproportionate compensation that would exceed the vessel's value. This aimed to provide equitable redress to the plaintiffs while ensuring that the damages awarded were proportionate and grounded in legal precedent (see paras 370–372).

(13) The court accepted the plaintiffs' submission that it was reasonably foreseeable for the defendant, aware of the nature of yachts as pleasure crafts, that supplying contaminated fuel could cause significant distress and anxiety. The court, therefore, found that the plaintiffs were entitled to compensation for the mental distress and inconvenience suffered but the compensation must be proportionate and not excessive. The court determined that a reasonable sum for damages under this head was RM10,000. This amount reflected a balance between the plaintiffs' legitimate claim for compensation for the distress and anxiety suffered and the need to ensure that such compensation was not disproportionately high considering the nature of the contract and the absence of a diagnosed psychological condition. This sum, therefore, represented modest but fair compensation for the plaintiffs' loss of enjoyment and the mental distress endured due to the defendant's actions (see paras 376–378).

[Bahasa Malaysia summary

Pertikaian antara pihak-pihak di sini boleh dilihat daripada notis tuntutan plaintif-plaintif bertarikh 25 Julai 2019 kepada Langkawi Yacht Club Bhd

('defendan') yang mendakwa bahawa Royal Langkawi Yacht Club ('RLYC') telah membekalkan bahan api diesel tercemar daripada pam bahan api RLYC Marina ke kapal mereka, menyebabkan kerugian dan kerosakan yang besar. Dalam notis tuntutan yang sama, plaintif-plaintif menuntut bayaran sebanyak USD1,380,663.75 untuk kos bahan api dan kerugian berbangkit. Defendan mempertikaikan tuntutan plaintif-plaintif, oleh itu, plaintif-plaintif meneruskan dengan tindakan semasa untuk relif-relif berikut: (a) ganti rugi berjumlah USD193,959.19 untuk semua perbelanjaan kerugian dan kerosakan yang dialami oleh plaintif-plaintif akibat penggunaan bahan api tercemar yang dibekalkan oleh defendan untuk dinilai oleh mahkamah; (b) ganti rugi bagi kehilangan penggunaan kapal mereka dari 20 Julai 2018–30 September 2019; dan (c) ganti rugi untuk serangan terhadap perasaan, tekanan mental, kebimbangan, kekecewaan, kehampaan, ketidakselesaan, kesulitan dan kehilangan keseronokan. Isu-isu yang timbul ialah: (i) sama ada kapal tersebut benar-benar mengalami kerosakan seperti yang didakwa; (ii) sama ada kerosakan ini disebabkan oleh bahan api yang tercemar, khususnya bahan api diesel yang bercampur dengan air masin; (iii) sama ada terdapat kemungkinan punca kerosakan yang lain di luar pertimbangan munasabah atau kawalan defendan, dan tidak berkaitan dengan bahan api daripada pam bahan api RLYC Marina; (iv) sama ada defendan membekalkan bahan api tercemar daripada pam bahan api RLYC Marina; (v) sama ada plaintif-plaintif bertindak secara munasabah untuk mengurangkan kerugian dan kerosakan mereka; dan (vi) sama ada plaintif-plaintif benar-benar mengalami kerugian dan kerosakan seperti yang dituntut. Secara keseluruhannya, persoalan utama bagi penentuan mahkamah adalah sama ada berdasarkan keterangan yang dikemukakan, defendan boleh dipertanggungjawabkan sama ada atas pelanggaran kontrak atau melakukan kecuaian. Dalam hal ini, mahkamah perlu mempertimbangkan soalan-soalan berikut: (A) sama ada defendan melanggar kewajipan berjaga-jaga tersirat dan/atau s 16 Akta Jualan Barangan 1957 ('AJB') dengan membekalkan bahan api diesel yang tercemar, yang membawa kepada kerosakan pada kapal plaintif-plaintif; dan (B) sama ada defendan melanggar kewajipan berjaga-jaganya untuk membekalkan bahan api berkualiti baik, mengakibatkan kerosakan pada kapal plaintif-plaintif.

Diputuskan, membenarkan tuntutan plaintif-plaintif dengan kos sebanyak RM100,000 kepada plaintif-plaintif tertakluk kepada bayaran alokator:

(1) Mahkamah mendapati bahawa kapal tersebut memang mengalami kerosakan yang besar berikutan pengisian minyak di Marina RLYC. Penemuan ini berdasarkan keterangan-keterangan berikut: (a) pemerhatian oleh kru kapal ('PW1') yang disokong oleh anak kapal lain bahawa kira-kira 24 jam selepas menggunakan bahan api tersebut, dia memerhatikan terdapat jumlah asap yang tidak normal keluar dari ekzos; (b) penemuan oleh jurutera servis enjin kapal ('PW7') bahawa kerosakan tersebut, iaitu, asap hitam tebal dari ekzos enjin, bunyi

ketukan luar biasa dari silinder enjin, peningkatan minyak enjin, dan penapis bahan api yang disekat, adalah perkara biasa yang berlaku apabila bahan api yang tercemar memasuki pam penyuntik; (c) penemuan oleh jurutera mekanik elektrik dengan pengalaman lebih 30 tahun yang dikenali sebagai Sean Griffin ('PW5') yang menemui kegagalan penjana Lampu Utara, ketidakfungsian alternator 120 amp, dan kegagalan Pengatur Voltan Automatik (AVR); (d) laporan-laporan penilai bertarikh 30 November 2018 dan 1 Jun 2019 yang disediakan oleh Domnic Alexander ('PW2') yang memberikan akaun terperinci tentang kerosakan; dan (e) invois daripada Boustead Langkawi Shipyard Sdn Bhd, memperincikan pembaikan dan penggantian menyeluruh yang dilakukan ke atas kapal tersebut yang menyokong tahap kerosakan (lihat perenggan 19–24).

(2) Mahkamah mendapati keterangan yang diberikan oleh penilai tersebut, PW5, PW7 serta keterangan pakar defendan yang dikenali sebagai Klaus Jurgen Heer ('KJ Heer') yang mengakui tentang kehadiran air dalam bahan api menunjukkan kerosakan kepada kapal tersebut sememangnya disebabkan oleh bahan api yang tercemar, khususnya bahan api diesel yang bercampur dengan air masin. Hujah-hujah defendan, walaupun membangkitkan alternatif yang berpotensi, tidak cukup untuk menjejaskan keterangan-keterangan yang meyakinkan dan konsisten yang dikemukakan oleh plaintif-plaintif. Konvergensi keterangan-keterangan ini, terutamanya keputusan ujian dan analisis pakar yang bersifat terperinci dan menyokong, telah membuktikan dengan kukuh kes plaintif-plaintif. Oleh itu, mahkamah membuat kesimpulan bahawa kerosakan tersebut adalah disebabkan oleh bahan api yang tercemar (lihat perenggan 89, 99, 108–109 & 112).

(3) Defendan menyatakan bahawa kerosakan kapal tersebut mungkin disebabkan oleh faktor selain daripada bahan api yang tercemar namun gagal mengemukakan apa-apa kemungkinan sebab alternatif. Sebaliknya, plaintif-plaintif memberikan naratif yang koheren dan meyakinkan yang disokong oleh keterangan yang kukuh, menegaskan bahawa kerosakan tersebut sememangnya disebabkan oleh bahan api yang tercemar. Pakar defendan, KJ Heer, gagal memberikan penjelasan alternatif yang berdaya maju untuk kemasukan air. Kekurangan keterangan langsung daripada pakar defendan, digabungkan dengan keterangan plaintif-plaintif yang komprehensif dan konsisten, menyebabkan mahkamah membuat kesimpulan bahawa satu-satunya punca kerosakan kapal tersebut adalah bahan api tercemar, khususnya bahan api diesel yang bercampur dengan air masin. Plaintif-plaintif telah berjaya menunjukkan, melalui rekod penyelenggaraan terperinci, keterangan pakar, dan hujah logik, bahawa tiada sebab lain yang munasabah di bawah keadaan yang dikemukakan (lihat perenggan 113 & 117).

(4) Rangka kerja undang-undang untuk menilai penyebaban dan keterpencilan kerosakan dalam kedua-dua kontrak dan tort sememangnya penting dalam kes ini. Seksyen 101 Akta Keterangan 1950 dengan jelas memberi mandat bahawa plaintif-plaintif menanggung beban pembuktian atas imbangan kebarangkalian untuk mewujudkan semua elemen pelanggaran kontrak dan tort. Adalah menjadi kewajipan ke atas plaintif-plaintif bukan sahaja untuk bertindak balas terhadap pembelaan defendan tetapi juga untuk secara aktif membuktikan kes mereka. Mereka mesti menunjukkan, di atas imbangan kebarangkalian, bahawa kerosakan pada kapal tersebut adalah akibat langsung daripada kegagalan defendan untuk membekalkan bahan api yang berkualiti. Dalam memutuskan kes ini, mahkamah merujuk kepada kes-kes *Vinmar International Ltd and another v Theresa Navigation SA* [2001] 2 All ER (Comm) 243 ('Vinmar'), *Galoo Ltd (in liq) and others v Bright Grahame Murray (a firm) and another* [1995] 1 All ER 16 ('Galoo'), dan *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ('Gimpex'). Kes-kes ini menekankan bahawa pembuktian penyebaban tidak memerlukan kepastian mutlak; sebaliknya, ia memerlukan penentuan apa yang lebih berkemungkinan daripada tidak, berdasarkan keterangan yang dikemukakan dan penggunaan akal/deria umum (lihat perenggan 280, 284 & 286).

(5) Selepas melakukan analisis yang teliti dan menyeluruh terhadap semua keterangan yang dikemukakan, dan mengguna pakai pendekatan inferens logik dan akal/deria umum dari *Vinmar*, *Galoo* dan *Gimpex* kepada fakta kes, mahkamah mendapati bahawa adalah lebih berkemungkinan daripada tidak bahawa bahan api yang tercemar, yang menyebabkan kerosakan ketara pada kapal tersebut, telah dibekalkan oleh defendan di RLYC. Penemuan ini adalah berdasarkan urutan kejadian, sejarah keadaan dan penyelenggaraan kapal, analisis bahan api yang tercemar, tindak balas defendan terhadap kejadian tersebut, ketiadaan apa-apa penjelasan alternatif untuk pencemaran tersebut, dan kebimbangan mengenai amalan operasi defendan. Oleh itu, plaintif-plaintif telah berjaya melepaskan beban pembuktian mereka di atas imbangan kebarangkalian (lihat perenggan 305).

(6) Plaintif-plaintif telah menunjukkan pendekatan yang tekun dan bertanggungjawab untuk mengurangkan kerugian dan kerosakan yang disebabkan oleh bahan api yang disyaki tercemar tersebut. Tindakan mereka sesuai dengan situasi mendesak dan mencabar yang mereka hadapi, mengimbangi keperluan untuk tindakan segera dengan batasan praktikal keadaan mereka. Oleh itu, mahkamah mendapati bahawa plaintif-plaintif telah memenuhi kewajipan mereka untuk mengurangkan kerugian mereka dengan berkesan dan munasabah di bawah keadaan tersebut (lihat perenggan 306 & 312).

(7) Seksyen 16 AJB menyiratkan syarat bahawa barang-barang yang dijual hendaklah semunasabahnya sesuai untuk tujuan ianya dibeli, dengan syarat pembeli memaklumkan kepada penjual tujuan khusus barangan tersebut diperlukan, dan bergantung pada kemahiran dan pertimbangan penjual. Mahkamah mendapati bahawa plaintif-plaintif telah membuktikan dengan memuaskan prasyarat bagi pemakaian s 16 AJB. Pertama, sebagai pengendali RLYC Marina, defendan sudah pasti mengetahui tujuan khusus bahan api tersebut diperlukan, iaitu untuk mengisi minyak kapal untuk pelayaran yang diinginkan. Tujuan khusus ini telah dimaklumkan kepada defendan semasa pembelian dibuat. Kedua, terdapat pergantungan yang jelas oleh plaintif-plaintif terhadap kemahiran dan pertimbangan defendan dalam membekalkan bahan api berkualiti yang sesuai untuk kapal tersebut, mengambil kira perniagaan defendan yang membekalkan bahan api kepada bot di marina yang memenangi anugerah tersebut. Ketiga, defendan biasa menjalankan perniagaan membekalkan bahan api. Keterangan yang dikemukakan dengan jelas menunjukkan bahawa bahan api yang dibekalkan oleh defendan telah tercemar, yang membawa kepada kerosakan yang ketara kepada kapal tersebut. Pencemaran dan kerosakan yang terhasil ini mengesahkan pelanggaran defendan terhadap syarat tersirat di bawah s 16 AJB untuk membekalkan bahan api yang berkualiti dan sesuai untuk tujuan yang dimaksudkan (lihat perenggan 315, 317–318 & 320).

(8) Dalam kes *Caparo Industries plc v Dickman and others* [1990] 2 AC 605 ('Caparo'), mahkamah menjelaskan bahawa untuk mewujudkan kewajipan berjaga-jaga, mesti ada kerosakan yang boleh dijangka, hubungan 'kedekatan' atau 'kejiranan' yang dikitiraf secara sah antara pihak-pihak, dan konteks di mana adalah adil, saksama dan munasabah bagi undang-undang untuk mengenakan kewajipan sedemikian. Dalam kes ini, mahkamah mendapati defendan mempunyai kewajipan berjaga-jaga kepada plaintif-plaintif. Pertama, sebagai pembekal bahan api diesel kepada kapal layar, termasuk kapal plaintif-plaintif, adalah munasabah untuk diramalkan bahawa membekalkan bahan api yang tercemar boleh mengakibatkan kerosakan pada kapal. Mengenai kedekatan, hubungan antara defendan, sebagai pengendali pam bahan api RLYC Marina, dan plaintif-plaintif, sebagai pengguna perkhidmatan 'bunkering', mewujudkan hubungan yang rapat dan langsung. Ini memenuhi elemen kedua ujian *Caparo*. Ketiga, memandangkan sifat perhubungan dan pergantungan yang diletakkan oleh plaintif-plaintif kepada defendan untuk membekalkan bahan api berkualiti, adalah adil dan munasabah untuk mengenakan kewajipan berjaga-jaga ke atas defendan untuk faedah plaintif-plaintif. Defendan dalam kes ini telah gagal membekalkan bahan api yang berkualiti baik kepada plaintif-plaintif, oleh itu, defendan telah melanggar kewajipan berjaga-jaganya. Tindakan defendan, atau kegagalannya, secara langsung

telah menyebabkan kerosakan pada kapal tersebut, yang seterusnya membawa kepada kehilangan dan kerugian (lihat perenggan 324, 326–327 & 329).

(9) Seksyen 74 Akta Kontrak 1950 menyatakan bahawa pihak yang mengalami kemungkiran berhak mendapat pampasan bagi kerugian sama ada yang secara semulajadi timbul daripada kemungkiran tersebut atau berada dalam pertimbangan pihak-pihak pada masa pembentukan kontrak. Ini termasuk kerugian yang boleh dijangka yang dikaitkan secara langsung dengan kemungkiran tersebut. Oleh itu, untuk tuntutan pertama ganti rugi — kerugian langsung dan berbangkit yang timbul daripada bahan api yang tercemar — prinsip ini terpakai secara langsung. Walau bagaimanapun, penggunaan prinsip undang-undang tort telah meluaskan skop ganti rugi yang boleh dipulihkan. Menurut Lord Blackburn dalam *Livingstone v Rawyards Coal Company* (1880) 5 App Cas 25 (HL), tujuan ganti rugi dalam tort adalah untuk meletakkan pihak yang cedera pada kedudukan yang sepatutnya mereka ada sekiranya perbuatan salah tidak berlaku. Prinsip ini amat relevan dengan tuntutan plaintif-plaintif bagi kehilangan penggunaan kapal dan kerugian bukan kewangan (lihat perenggan 332–333).

(10) Prinsip keterpencilan ganti rugi digunakan dalam kontrak dan tort. Ia mengehadkan pemulihan kepada kerugian yang boleh diramalkan pada masa kontrak dibuat atau pada masa perbuatan tort tersebut. Oleh itu, bagi setiap bahagian tuntutan, mahkamah akan menilai sama ada defendan dapat meramalkan bahawa pembekalan bahan api yang tercemar bukan sahaja akan membawa kepada keperluan untuk pembaikan tetapi juga mengakibatkan kehilangan penggunaan kapal dan menyebabkan tekanan emosi dan psikologi yang ketara kepada plaintif-plaintif. Beban pembuktian terletak pada plaintif (lihat perenggan 334–335).

(11) Mahkamah mendapati tuntutan plaintif-plaintif bagi kerugian langsung dan berbangkit daripada bahan api tercemar berjumlah USD193,959.19 telah dibuktikan melalui pengumpulan dokumen dan rekod kewangan yang komprehensif. Mahkamah seterusnya mendapati penjelasan dan keterangan plaintif-plaintif mengenai setiap item perbelanjaan yang dipertikaikan adalah meyakinkan dan munasabah. Keterangan yang dikemukakan adalah sejajar dengan akibat logik insiden bahan api yang tercemar, dan kegagalan defendan untuk mencabar secukupnya aspek utama tuntutan plaintif-plaintif semasa pemeriksaan balas mengukuhkan lagi kedudukan plaintif-plaintif. Oleh itu, mahkamah memutuskan memihak kepada plaintif-plaintif bagi ganti rugi yang dituntut tersebut dan menerima penjelasan dan sokongan keterangan mereka berbanding bantahan-bantahan defendan (lihat perenggan 342–343 & 366).

(12) Berhubung dengan tuntutan kehilangan penggunaan kapal tersebut, mahkamah mendapati plaintif-plaintif berhak mendapat pampasan atas kehilangan penggunaan kapal mereka tetapi tempoh tuntutan selama 63 minggu adalah berlebihan dan kaedah pengiraan ganti rugi berdasarkan kos menyewa kapal ganti adalah tidak munasabah. Selaras dengan prinsip yang ditubuhkan dalam *Beechwood Birmingham Ltd v Hoyer Group UK Ltd* [2011] QB 357 (Mahkamah Rayuan), bahawa apabila tiada kapal gantian disewa, ganti rugi hendaklah dikira berdasarkan faedah ke atas nilai modal kapal. Menggunakan nilai modal sebanyak USD800,000 seperti dalam iklan plaintif kedua untuk penjualan kapal tersebut dan menggunakan kadar faedah tahunan sebanyak 5%, mahkamah mendapati adalah munasabah untuk memberikan ganti rugi bagi kehilangan penggunaan untuk tempoh yang disemak semula selama 219 hari. Oleh itu, mahkamah memberikan ganti rugi atas kehilangan penggunaan kapal tersebut sebanyak USD24,000. Angka ini mencerminkan pertimbangan seimbang terhadap kerugian plaintif-plaintif dan keperluan untuk mengelakkan pampasan yang tidak seimbang yang akan melebihi nilai kapal tersebut. Ini bertujuan untuk memberikan ganti rugi yang saksama kepada plaintif-plaintif dan pada masa yang sama memastikan bahawa ganti rugi yang diawardkan adalah berkadar dan berdasarkan duluan undang-undang (lihat perenggan 370–372).

(13) Mahkamah menerima hujahan plaintif-plaintif bahawa adalah munasabah untuk defendan, menyedari sifat kapal layar sebagai kraf keseronokan, bahawa membekalkan bahan api yang tercemar boleh menyebabkan tekanan dan kebimbangan yang ketara. Oleh itu, mahkamah mendapati bahawa plaintif-plaintif berhak mendapat pampasan untuk tekanan mental dan kesulitan yang dialami tetapi pampasan tersebut mestilah berkadar dan tidak berlebihan. Mahkamah memutuskan bahawa jumlah yang munasabah untuk ganti rugi di bawah bahagian ini ialah RM10,000. Jumlah ini mencerminkan keseimbangan antara tuntutan sah plaintif-plaintif untuk pampasan bagi tekanan dan kebimbangan yang dialami dan keperluan untuk memastikan pampasan tersebut tidak tinggi secara tidak seimbang dengan mengambil kira sifat kontrak tersebut dan ketiadaan keadaan psikologi yang didiagnosis. Oleh itu, jumlah ini mewakili pampasan yang sederhana tetapi adil untuk kehilangan perolehan plaintif-plaintif dan tekanan mental yang dialami akibat daripada tindakan defendan (lihat perenggan 376–378).]

Cases referred to

Ahmad Fuad bin Abd Rahman v Shell Malaysia Trading Sdn Bhd [2017] 11 MLJ 650; [2016] 1 LNS 1034, HC (refd)

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770, CA (folld)

Al-Ambia Sdn Bhd v Foremost Prospect Sdn Bhd & Anor [2019] MLJU 1246, HC (refd)
Arab-Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors and other appeals [2003] 1 MLJ 567, CA (folld)
Batu Kemas Industri Sdn Bhd v Kerajaan Malaysia Tenaga Nasional Bhd [2015] 5 MLJ 52, CA (refd)
Beechwood Birmingham Ltd v Hoyer Group UK Ltd [2011] QB 357, CA (refd)
Bonham-Carter v Hyde Park Hotel Ltd [1948] 64 TLR 177, KBD (refd)
Caparo Industries plc v Dickman and others [1990] 2 AC 605, HL (folld)
Dato' Pardip Kumar Kukreja & Anor v Vell Paari a/l Samy Vellu [2016] 4 MLJ 649, CA (refd)
Galoo Ltd (in liq) and others v Bright Grahame Murray (a firm) and another [1995] 1 All ER 16, CA (folld)
Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal [2015] 2 SLR 686, CA (folld)
H and others (minors) (Sexual Abuse: Standard of Proof), In re [1996] AC 563, HL (refd)
Hadley and Another v Baxendale and Others (1854) 9 Ex 341 (refd)
Heywood v Wellers (a firm) [1976] 1 All ER 300, CA (refd)
Jarvis v Swans Tours Ltd [1973] 1 All ER 71, CA (refd)
Junaidi bin Abdullah v PP [1993] 3 MLJ 217, SC (refd)
Livingstone v Rawyards Coal Company (1880) 5 App Cas 25, HL (refd)
Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors [2006] 2 MLJ 389, FC (folld)
Miller v Minister of Pensions [1947] 2 All ER 372, KBD (refd)
Perry v Sidney Phillips & Son (a firm) [1982] 3 All ER 705, CA (refd)
Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd [1994] 3 MLJ 777, FC (refd)
Union Alloy (M) Sdn Bhd v Sykt Pembenaan Yeoh Tiong Lay Sdn Bhd [1993] 3 MLJ 167, HC (refd)
Vinmar International Ltd and another v Theresa Navigation SA [2001] 2 All ER (Comm) 243, QBD (folld)
Watts and another v Morrow [1991] 4 All ER 937, CA (refd)
Whitehouse v Jordan and another [1981] 1 WLR 246, HL (refd)

Legislation referred to

Contracts Act 1950 s 74
Evidence Act 1950 ss 101, 114(g)
Petroleum Development Act 1974
Sale of Goods Act 1957 s 16, 16(1)(a)

Jeremy M Joseph (with Vinodhini Samuel) (Joseph & Partners) for the plaintiffs.
Ooi Huey Miin (with Dianne Hong) (Raja, Darryl & Loh) for the defendant.

Atan Mustaffa J:

[1] In the quiet waters of the Royal Langkawi Yacht Club ('RLYC'), a story unfolded that now rests before this court, a tale of adventure turned awry, where the SV 'Binary Star', a vessel of dreams and explorations owned by the first plaintiff and captained by the second, found her journey abruptly halted. The plaintiffs allege that their aspirations and safety were jeopardised by what they claim was contaminated fuel supplied by the defendant, the operator of the RLYC. This saga began with a routine fueling at the RLYC, a prelude to a family holiday and a grand circumnavigation, but swiftly transformed into a nightmare as their yacht, shortly after leaving the marina, succumbed to engine failures and extensive damage. The plaintiffs assert that this misfortune was the direct result of the defendant's actions — supplying fuel unfit for its purpose and of unmerchantable quality. This case now presents a legal conundrum: did the contaminated fuel from the RLYC, as the plaintiffs steadfastly claim, indeed cause this calamity? This court is tasked with navigating through the complex waters of contractual obligations, alleged negligence, and the intricate mechanics of a pleasure yacht's downfall, to discern where the truth lies and, accordingly, where the responsibility falls.

BACKGROUND FACTS

[2] This action pertains to a pleasure yacht originally built in 1992 as the 'SY Blue Dawn of Sark', a Trintella A. In late 2015, the yacht was purchased by Suzannah Helen Harvey, the first plaintiff ('Suzannah'). Upon acquisition, the ownership was registered in her name, and the vessel was subsequently renamed the SV 'Binary Star' ('vessel').

[3] The vessel is a 60-foot yacht primarily used for personal and family excursions. Under the command of Suzannah's father, Ronan Harvey ('Ronan'), the second plaintiff, the vessel was actively navigating since August 2015, covering over 30,000 nautical miles.

[4] The vessel underwent an extensive period of annual docking and maintenance from 25 October 2017–21 May 2018 at Northern Shipyard Sdn Bhd ('Northern Shipyard') in Langkawi, Malaysia. This comprehensive maintenance process was to ensure the vessel's optimal operational condition and included the complete cleaning of all fuel tanks, thorough testing and evaluation of fuel lines and valves, and the replacement of all fuel system filters.

[5] Following this maintenance phase, the vessel prepared for her next voyage to Male in the Maldives by bunkering a total of 2,600 litres of fuel on 21 May 2018 and 22 May 2018. This fuel was distributed among the Centre, Port, and Starboard Tanks of the vessel. The vessel then departed from

Northern Shipyard on 26 May 2018, setting sail for Yacht Haven Marina in Phuket. This journey served as a sea trial to test the vessel's performance post-maintenance. During this trial, the vessel primarily utilised 90 litres of fuel from the Centre Tank, supplemented by subsequent uplifts from the Starboard Tank. After successfully completing her sea trial, the vessel returned to Langkawi by 27 June 2018 and docked at the Royal Langkawi Yacht Club Marina ('the RLYC Marina') in Kuah operated by the Royal Langkawi Yacht Club ('the RYLC'), which in turn was operated by the defendant, Langkawi Yacht Club Bhd.

[6] On 4 July 2018, the RLYC supplied the vessel with 1,615.85 litres of diesel fuel, at a cost of RM4,994.50. The vessel uplifted the fuel from the RLYC Marina fuel pump which was primarily loaded into the vessel's Starboard Tank, with additional amounts used to top off the port and centre tanks.

[7] After her fuel uplift at the RLYC Marina, the vessel embarked on her journey from 4 July 2018–12 July 2018, during which she was primarily motor sailed, and her generator was utilised for powering onboard electronics. On 12 July 2018, around 0200 hours, the crew began using the fuel from the Starboard Tank that had been recently acquired from the RLYC.

[8] By the early hours of 13 July 2018, the crew observed significant smoke emanating from the engine exhaust. An immediate and urgent investigation was conducted, revealing that the fuel in the Day Tank was contaminated, appearing milky and heavy with water. In response, the crew undertook immediate remedial measures including draining the Day Tank, changing the filters, and subsequently reloading it with fuel from the Centre and Port Tanks, in an attempt to mitigate the issue.

[9] Despite these efforts, the situation escalated when the engine experienced a dramatic overspeed while in neutral. The vessel suffered significant damage to the vessel's electrical systems and batteries and the crew continued with remedial actions to maintain the operation of the engine until the vessel safely reached her next destination, Male, Maldives where the vessel made an emergency stop on 17 July 2018 for crucial repairs. The damage extended to the main engine, generator engine, electrical systems, and batteries.

[10] Upon her arrival in Male, the vessel underwent a day of customs clearance procedures and only on 19 July 2018, a local service engineer named Athif boarded the vessel to conduct a thorough survey of the damages. In the aftermath of his initial assessment, Ronan communicated the details of the incident to the defendant via email.

[11] On board the vessel, Athif executed several necessary repairs over the months of August and September 2018, documenting the repair work culminating in a report issued on 9 September 2018. Despite the earlier mechanical challenges, the vessel was able to continue her journey from Male to Cochin without further incident. During this period, a sample of the fuel, taken by Ronan on 30 July 2018 was sent to Testing Services (UK) Ltd ('Intertek UK'). The vessel was then brought to the Boustead Langkawi Shipyard on or around May 2018 and docked for further repairs.

[12] Ronan contacted Tayfun Koksal, the General Manager of the RLYC on 4 November 2018 to address the fuel incident and engine damage, but no further tests were conducted. Meanwhile, the RLYC Harbourmaster arranged for a fuel sample to be tested by Petrotechnical Inspection (M) Sdn Bhd ('Petrotechnical') on 7 November 2018. Further investigations included a survey of the vessel at Boustead Langkawi Shipyard by a surveyor appointed by the Hull and Machinery ('H&M') insurer, Charles Taylor Marine Sdn Bhd ('Charles Taylor Marine') on 30 November 2018, and subsequent tests by ITS Testing Services (M) Sdn Bhd ('Intertek Malaysia') on 7 March 2019 revealed significant water content in the fuel.

[13] The plaintiffs issued a notice of demand on 25 July 2019 to the defendant and 'Royal Langkawi Yacht Club Bhd' (stated in error) through their solicitors. In the demand, the plaintiffs claimed that the RLYC supplied contaminated diesel fuel to their vessel, causing substantial loss and damage, and demanded a payment of USD1,380,663.75 for the fuel cost and consequential losses. The defendant disputed the plaintiffs' claims by way of an email dated 1 August 2019.

[14] The plaintiffs then filed this action on 25 September 2019, mainly claiming for:

(a) damages for all loss expense and damage suffered by the plaintiffs as a result of the use of the contaminated fuel supplied by the defendant to be assessed by this court;

(b) damages for the loss of use of the vessel from 20 July 2018–30 September 2019; and

(c) damages for assault on feelings, mental distress, anxiety, frustration, disappointment, discomfort, inconvenience and loss of enjoyment.

WITNESSES

[15] The plaintiffs called eight witnesses whose witness statements are marked 'WS-PW1' to 'WS-PW8' as follows:

(a) PW1 is Ronan Harvey, the second plaintiff in this action. He was the Master of the vessel and is a qualified engineer and the owner of Cotswold Airport EGBP. His evidence was on the damage to the vessel due to contaminated fuel and the subsequent losses and challenges he faced. His witness statements are marked as 'WS-PW1' and 'WS2-PWS1';

(b) PW2 is Domnic Alexander ('Domnic') who is a Marine Engineer and Surveyor appointed by Charles Taylor Marine to survey the vessel to ascertain the nature and extent of damage sustained to the main engine and generator engine of the vessel. His testimony focused on the condition and operational capabilities of the vessel. Here, he will be referred to also as the H&M Surveyor. His witness statement is marked as 'WS-PW2';

(c) PW3 is CW Nurmaudin bin CW Yusof, who is a senior chemist at Intertek Malaysia. His evidence centred on the laboratory analysis of fuel samples from the vessel, specifically addressing issues of contamination and water content in the fuel. His witness statement is marked as 'WS-PW3';

(d) PW4 is Gunther Barwick ('Gunther'), who was a crew member and a deckhand on the vessel. His evidence centred on the events and conditions experienced during the voyage to Male, specifically detailing the operational challenges and technical issues faced by the vessel and her crew. His witness statement is marked as 'WS-PW4';

(e) PW5 is Sean Leslie Griffin ('Sean Griffin'), who is a qualified electrical mechanic engineer and the Chief Operating Officer at Ocean Logistics Limited. His evidence centred on the technical investigation of electrical and mechanical issues on the vessel, particularly in relation to the engine overspeed incident and subsequent electrical failures. His witness statement is marked as 'WS-PW5';

(f) PW6 is Paul Kennett, who is a senior chemist with over 20 years of experience in liquid fuels testing and the customer support supervisor at Intertek UK. His evidence centred on the laboratory analysis of fuel samples from the vessel, specifically addressing their quality and compliance with industry standards. His witness statement is marked as 'WS-PW6';

(g) PW7 is Mohamed Athif ('Athif'), who is a Service Engineer with over 20 years of experience in diesel marine engines. His evidence centred on the repair and maintenance work he performed on the MTU (a diesel engine brand) engine of the vessel. His witness statement is marked as 'WS-PW2'; and

(h) PW8 is Lisa Diane Powell ('Lisa Powell'), who is a self-employed General Administrator and Bookkeeper, and consultant to Cotswold Airport in Cirencester, Gloucestershire, UK. Her evidence centred on managing the administration of the vessel claims, including keeping detailed records and accounts for all costs and expenses incurred due to the vessel engine damage. Her witness statement is marked as 'WS-PW8'.

[16] The defendant called eight witnesses whose witness statements are marked 'WS-DW1' to 'WS-DW8(B)' as follows:

(a) DW1 is Muhammad Asyraf bin Mohd Radzuan ('Asyraf'), who is a crew member at Mofaz Marine Sdn Bhd. His evidence centred on the operational aspects of the sailing yacht 'Manta Blu', particularly in relation to fueling practices and the absence of engine issues associated with the diesel supplied by the RLYC Marina. His witness statement is marked as 'WS-DW1';

(b) DW2 is Zulkifli bin Halim, who is the Marina Supervisor at the RLYC. His evidence centred on the procedures and practices of fuel dispensing at the marina, specifically detailing how diesel is supplied to vessels like the vessel in this action. His witness statement is marked as 'WS-DW2';

(c) DW3 is Tayfun Koksal ('Tayfun'), who is the former General Manager of the RLYC. His evidence centred on overseeing the operations of the RLYC, including fuel supply procedures, and addressing claims about contaminated fuel supplied to the vessel. His witness statement is marked as 'WS-DW3';

(d) DW4 is Raden Hasbullah bin Radenalwie ('Raden'), who is the Captain of the sailing yacht SY 'Gadis Pulao'. His evidence centred on the operations of his vessel, specifically discussing fueling practices and the absence of engine problems related to the diesel supplied by the RLYC Marina. His witness statements are marked as 'WS-DW4(A)' and 'WS-DW4(B)';

(e) DW5 is Azrin Dohat ('Azrin'), who is the former harbourmaster/marina manager at the RLYC. His evidence centred on the operations and fuel supply procedures at the RLYC, including details about diesel supply and quality control measures. His witness statement is marked as 'WS-DW5';

(f) DW6 is Azlan bin Abdullah, who is the Executive Director of the defendant. His evidence centred on the quality and handling of the fuel supplied by the RLYC, and addressing the claims of contamination in the fuel that allegedly caused damage to the vessel. His witness statement is marked as 'WS-DW6';

(g) DW7 is Maswadi bin Rashid ('Maswadi'), who is the Manager of Miru Enterprise Sdn Bhd ('Miru Enterprise'), a company engaged in fuel supply operations. His evidence centred on the supply of diesel fuel to the RLYC and the procedures and quality controls involved in this process. His witness statement is marked as 'WS-DW7'; and

(h) DW8 is Klaus Jurgen Heer ('KJ Heer'), who is a Director of Assembly Design Sdn Bhd with extensive experience in engineering since 1985 who gave evidence as the defendant's expert. His evidence centred on providing an expert opinion on whether the damages suffered by the vessel were caused by contaminated fuel supplied from the RLYC Marina. His witness statements are marked as 'WS-DW8(A)' and 'WS-DW8(B)'.

ISSUES

[17] In the ensuing part of this judgment, this court will structure its deliberations around the mutually agreed issues presented by the parties. These issues, pivotal to the resolution of this case, are as follows:

(a) whether the vessel indeed sustained the damage as claimed;

(b) whether this damage was caused by contaminated fuel, specifically diesel fuel mixed with saltwater;

(c) whether there were other possible causes of the damage that were beyond the reasonable contemplation or control of the defendant, and not related to the fuel from the RLYC Marina fuel pump;

(d) whether the defendant supplied the contaminated fuel from the RLYC Marina fuel pump;

(e) whether the plaintiffs acted reasonably to mitigate their losses and damages; and

(f) whether the plaintiffs indeed suffered the loss and damages as claimed.

ANALYSIS AND FINDINGS OF THE COURT

Whether the vessel sustained the damage

[18] The first issue to be considered is whether the vessel sustained damage subsequent to refueling at the RLYC Marina.

[19] Initially, the plaintiffs' case pivots on the observations of the vessel's crew, particularly those made by Ronan (PW1). Approximately 24 hours after utilising fuel from the Starboard Tank on 13 July 2018, an abnormal amount of smoke was observed emanating from the exhaust, a finding corroborated by

crew member Phil Diebert. Ronan's discovery of milky-looking fuel in the Day Tank's sight glass indicated contamination. The crew's responsive measures, including draining the contaminated fuel and changing main filters, were prudent yet indicative of an emergent issue. The engine's aberrant revving to 3,000 revolutions per minute ('RPM') and the triggering of the vessel's alarm system, including fire alarms, further affirmed the onset of significant mechanical and electrical issues. These included the failure of the Automatic Voltage Regulator ('AVR') on the 120 amp alternator, leading to overcharged domestic batteries, and other issues such as a blown 300 amp fuse and the overhaul of both engine alternators.

[20] The local MTU service engineer, Athif (PW7), boarded the vessel on 19 July 2018 in Male. His findings were critical: heavy black smoke from the engine exhaust, an unusual knocking sound from the engine cylinders, an increase in engine oil, and blocked fuel filters. These observations were consistent with the crew's reports and were further substantiated by photographs and video evidence of the vessel smoking. Athif's expertise with MTU engines lends credence to his findings and his assertion that the damage was typical of what occurs when contaminated fuel enters an injector pump.

[21] The plaintiffs also relied on the findings of Sean Griffin (PW5), an electrical mechanic engineer with over 30 years of experience. Upon inspection in Cochin, Sean Griffin noted the failure of the Northern Lights generator, the non-functionality of the 120 amp alternator, and the failure of the AVR. These damages were not only significant but also necessitated extensive repairs that were not feasible in Cochin, thus forcing the vessel to return to Langkawi for repairs.

[22] Furthermore, the H&M Surveyor's reports provided by Domnic Alexander (PW2), dated 30 November 2018 and 1 June 2019, give a detailed account of the damage. These reports enumerate specific damages such as the replacement of the fuel injection pump and attached governor, fuel injectors, the AVR of the 120 Amp Alternators attached to the Main Engine, and the generator engine among others. The survey conducted on 1 June 2019 revealed additional alarming details such as the jamming of the crankshaft and pistons, the rough surface of the Bottom End Bearings, and the seizure of the fuel injection pump.

[23] Lastly, the invoices from Boustead Langkawi Shipyard Sdn Bhd, detailing the comprehensive repairs and replacements undertaken on the vessel, corroborate the extent of the damage. These repairs included the replacement of the generator, a full electrical assessment and refit, the reinstatement of AVR units, and the overhaul of various other components.

[24] It is therefore clear that the vessel did indeed sustain considerable damage following the refueling at the RLYC Marina. These will be further considered in the assessment of damages under the head of direct and consequential loss.

Whether the damage was caused by contaminated fuel (diesel fuel mixed with saltwater)

Diesel fuel was contaminated with saltwater

[25] The starting point to this inquiry is to consider whether the diesel fuel used by the vessel in the voyage to Male was contaminated with saltwater as the plaintiffs claimed. Central to their claim is the testimony of Ronan himself, a qualified engineer and captain, who observed a milky appearance in the fuel from the Day Tank, indicative of water contamination. This initial observation was substantiated by the presence of heavy exhaust smoke and physical traces of water in the Day Tank. Ronan's long-standing experience and familiarity with the vessel since 2015 lend significant credence to his findings. His testimony is not just based on superficial examination but rooted in a deep understanding of the vessel's operations and maintenance, which gives it considerable weight.

[26] Corroborating Ronan's findings are the results from Intertek UK and Intertek Malaysia, independent testing services. The analyses were conducted over three separate occasions. Test 1 was conducted by Intertek UK performed on a sample taken from the Starboard Tank of the vessel by Ronan which was then sent to Intertek UK and received by Intertek UK on 30 July 2018 and analysed by senior chemist Paul Kennet (PW6). The samples for Test 2 were taken on 13 July 2021 and analysed by Intertek Malaysia. The samples for Test 3 were received by Intertek Malaysia on 20 July 2020 from Ronan Harvey. These comprehensive tests were crucial in establishing the nature and extent of the fuel contamination and its source. Fuel Test Report No 1, Fuel Test Report No 2 and Fuel Test Report No 3 consistently revealed water contamination in the fuel samples, notably from the Day Tank and the Starboard Tank. Fuel Test Report No 3, revealing a high sodium level in the Starboard Tank sample. Saltwater contamination is strongly suggested by this evidence, aligning with the plaintiffs' claim.

[27] Further substantiation comes from the expert analyses conducted by senior chemist Paul Kennet of Intertek UK and Chemist CW Nurmaudin (PW3) of Intertek Malaysia. Kennet's analysis under ISO 8217:2017 GMA standards identified the presence of cloudy fuel with free water and suspended matter, indicating a failure to meet the required 'Clear and Bright' standard. This finding is a clear indicator of water contamination. Nurmaudin's analyses, revealing a 75% water content by distillation in the Day Tank sample and

approximately 50% free water in the Starboard Tank sample, go beyond normal parameters and strongly support the claim of saltwater contamination.

[28] Athif, the local MTU service engineer, provides additional support with his observations in Male. His findings of water in the fuel and the altered smell of the fuel samples, combined with his expertise in engines, bolster the conclusion of contamination. His observation of potential contamination with aircraft jet fuel, while not definitively concluded, does not detract from the primary finding of water contamination.

[29] Moreover, the defendant's expert, KJ Heer (DW8), concedes the presence of water in the fuel. His analysis, particularly his acceptance of the 'white smoke' as indicative of steam from water during combustion and his reliance on the high water content found in Fuel Report No 2 conducted by Intertek Malaysia, aligns with the conclusion of water contamination. This concurrence from the defendant's expert adds significant weight to the plaintiffs' case.

[30] The defendant disputed that the conflicting findings from the three fuel test reports and questions the origins of the samples to undermine Ronan's claim of saltwater contamination in the vessel's Starboard Tank, suggesting an alternate source or cause for the fuel issues. In summary the defendant contended as follows:

(a) the context of how the samples were obtained was based on Ronan's assertion that fuel samples from the vessel's fuel tanks were collected on 13 July 2018 at sea and around 17 July 2018 at Male, Maldives, Ronan's claims that he took both sets of samples, and that the fuel for Fuel Report No 1 and No 3 was provided by him, while the fuel for Fuel Report No 2 was selected by Domnic;

(b) Fuel Test Report No 1, lacking clear evidence of the sample's origin, analysed a sample brought to the UK by Ronan under suspicious circumstances, tested under ISO 8217/2017 DMA Standards for various properties including lubricity, and found it met all standards except for appearance, which was 'cloudy, free water & suspended matter,' thus not confirming the fuel caused damage to the vessel's engine;

(c) Domnic clarified that except for Samples 3 and 4, all other samples (1, 2, 5, 6, 7 & 8) tested in Fuel Test Report No 2 and taken when the vessel was at Male, showed no water contamination in the Storage Tanks, including the Starboard Tank, but found water contamination in the Day Tank, contradicting the claim that the fuel from the RLYC Marina was contaminated with saltwater; and

(d) Fuel Test Report No 3, conducted in July 2020, revealed unclear origins of the tested samples and contradicted Ronan's theory of saltwater contamination in the Starboard Tank, with tests showing no sodium or water in the 'Day Sump Tank' sample and significant water and sodium in the 'Starboard Day Tank' sample, indicating that the Starboard Tank was not contaminated with saltwater.

[31] Given the defendant's challenges, the court will analyse the evidence from both parties in respect of the three Fuel Tests.

Fuel Test Report No 1

[32] The defendant challenges the origins of the fuel sample tested, suggesting that it was not conclusively from the Starboard Tank and raising questions about its transport to the UK for testing. Specifically, the defendant contends that the suspect circumstances regarding Fuel Test Report No 1 stem from two key issues: firstly, the unconventional transportation of the fuel sample in personal luggage by Ronan, as disclosed by Lisa Powell, which raises concerns about the potential for contamination or mishandling; and secondly, the absence of objective evidence or proper documentation verifying the sample's origin, particularly the claim by Ronan that it was sourced from the 'Starboard Tank', leaving the sample's representativeness and integrity in question. Moreover, the defendant posits that even if the sample was from the Starboard Tank and contaminated, the test results do not confirm that this fuel caused damage to the vessel's engine, as the sample passed the lubricity test.

[33] However, upon scrutiny, the defendant's arguments do not withstand the evidence. Ronan, as the Master of the vessel, provided a detailed account of his actions following the discovery of the fuel issue, including the collection and handling of the Test 1 sample. He confidently and consistently asserts that he personally took the sample from the Starboard Tank on the day of the incident, 13 July 2018, and subsequently arranged for its transport to Intertek UK for analysis.

[34] Ronan's testimony is not merely a general assertion but is supported by specific details that lend credibility to his account. He described the process of extracting the sample, the steps taken to ensure its integrity, and the arrangements made for its analysis. This level of detail in Ronan's testimony is indicative of a firsthand, direct experience with the sampling process, distinguishing it from a generic or vague statement.

[35] Importantly, there is an absence of any contemporary evidence that contradicts Ronan's claim about the origin of the Test 1 sample. No witness statements, vessel logs, or other documentary evidence presented by the

defendant effectively challenge Ronan's account. The lack of such contradictory evidence further reinforces the reliability of Ronan's statement.

[36] The court also considers the broader context of Ronan's role and responsibilities as the Master of the vessel. In this capacity, Ronan would have been intimately involved in and knowledgeable about the vessel's operational aspects, including fuel management. His position and experience thus lend additional weight to his testimony regarding the fuel sampling process.

[37] Regarding the transportation of the sample, the court notes the discrepancy in timelines concerning Ronan's travel and the receipt of the sample by Intertek UK. The defendant asserts that the circumstances under which the fuel sample was brought to the UK are dubious, citing Lisa Powell's (PW8) testimony about Ronan transporting the sample in his luggage. However, upon closer examination, this claim is significantly weakened by the factual timeline of events.

[38] Lisa Powell's recollection, as presented by the defendant, suggests that Ronan personally transported the fuel sample to the UK. This assertion, however, is directly contradicted by the established timeline of events. The court notes that the sample was received by Intertek UK on 30 July 2018, a date when Ronan was verifiably on board the vessel in Male. This fact is crucial as it directly challenges the notion that Ronan could have transported the sample to the UK himself, as claimed.

[39] Furthermore, Ronan did not return to New Zealand until November 2018, several months after the Test 1 sample was received by Intertek UK. This substantial gap between the sample's receipt by Intertek UK and Ronan's return to New Zealand further undermines the defendant's assertion of suspicious transportation. It is clear from this timeline that Ronan could not have personally delivered the sample to the UK, as he was still aboard the vessel in Male at the relevant time.

[40] The discrepancy between Lisa Powell's recollection and the actual events as they unfolded is significant. It suggests that her memory of the events may be flawed or incomplete, casting doubt on the defendant's narrative of suspect circumstances. The court finds that the timeline of events, as established by verifiable facts, effectively counters the suggestion of dubious circumstances surrounding the sample's transportation to Intertek UK.

[41] In light of this analysis, the court concludes that the defendant's claim regarding the transportation of the Test 1 sample lacks sufficient grounding in factual evidence. The timeline discrepancies point towards a more innocuous

A explanation for the sample's journey to Intertek UK, thereby preserving the integrity and credibility of the sample and its subsequent analysis.

B **[42]** The court also observes that the largest quantity of fuel uplifted at the RLYC was loaded into the Starboard Tank. Combining this fact with Ronan's testimony about the origin of the Test 1 sample supports the plaintiffs' claim that the contaminated fuel originated from the RLYC.

C **[43]** The defendant places significant reliance on the fact that the fuel sample met the lubricity standards under ISO 8217/2017 DMA Standards, suggesting that this compliance implies the fuel was not detrimental to the vessel's engine. This perspective, while focusing on one aspect of the test results, fails to account for the comprehensive nature of the fuel quality assessment as required under the said standards.

D **[44]** The ISO 8217/2017 DMA Standards encompass a range of parameters to ascertain fuel quality, not limited to lubricity alone. Lubricity, while a crucial factor in assessing fuel quality, particularly for the smooth operation of engine components, is not the sole determinant of a fuel's suitability for use in E maritime engines. The appearance of the fuel, particularly its 'cloudy, free water & suspended matter' condition as reported in the test results, is a significant deviation from the expected norm and indicates potential issues.

F **[45]** The presence of free water and suspended matter in the fuel is especially concerning. Water contamination in fuel can lead to various detrimental effects on a vessel's engine, such as corrosion and the breakdown of the fuel's inherent lubricating properties, despite it meeting the lubricity standards in a laboratory setting. The real-world impact of such contamination, especially in the high-stress operational environment of a maritime engine, can be substantially G different from controlled test conditions.

[46] Paul Kennet's testimony underscores the concern for contamination. As the customer service representative, his recollection of the conversation about the fuel sample suggests an awareness of potential issues beyond the mere H lubricity. This supports the plaintiffs' assertion that there was a suspicion of contamination, corroborating their claim that the fuel was not merely substandard in appearance but potentially harmful to the vessel's engine.

I **[47]** Moreover, the defendant's argument overlooks the broader context in which these test results are situated. The plaintiffs have presented a cohesive narrative, supported by various pieces of evidence, including expert testimonies and independent assessments, that consistently point to fuel contamination as a significant factor in the damage to the vessel's engine. The mere compliance with one aspect of the ISO standards, in this case, lubricity,

does not automatically negate the potential harm caused by other aspects of the fuel's quality, particularly when such compliance is juxtaposed against clear evidence of contamination.

[48] Independent observations from the H&M Surveyor, Domnic, who visually confirmed water in the fuel samples taken on the same day as the Test 1 sample, further corroborate the presence of water contamination.

[49] On the day the Test 1 sample was taken, Domnic conducted a visual inspection of the fuel samples. His observations led to the conclusion that there was apparent water contamination. This is not a trivial determination. I accept that a seasoned surveyor's ability to visually identify water in fuel relies on specific indicators such as the fuel's opacity, colour, and any visible separation of substances within the sample. The presence of water in fuel can manifest as a cloudy appearance, often accompanied by visible droplets or a distinct layer of water, which is markedly different from the clear, homogenous appearance expected of uncontaminated fuel.

[50] Domnic's decision to forgo further laboratory testing of these samples is reasonable. In the field of maritime surveying, a decision like this would not be made lightly when predicated on the belief that the evidence of contamination is so manifest that additional tests would be redundant.

[51] Moreover, the testimony of Domnic and other independent service providers, including the local service engineer Athif and Sean Griffin, consistently points to the contamination of the fuel as the probable cause of the damage to the vessel's engines. This is a significant point, as it directly counters the defendant's claim that the fuel, even if from the Starboard Tank and supplied by the RLYC, could not have been the cause of the damage due to its compliance with the lubricity standard.

[52] Domnic's detailed analysis, supported by visual and technical inspection, provides a compelling argument that the damage was indeed due to contaminated fuel. His observations of heavy smoking, breakdown of lubrication, and subsequent engine and electrical issues corroborate the plaintiffs' claims. Additionally, the local service engineer Athif's findings, which include observations of thick grey to black fuel and engine damage consistent with water contamination, further reinforce this conclusion.

[53] In conclusion, the defendant's arguments regarding Fuel Test Report No 1 and its implications on engine damage are found to be lacking in substance and finds in favour of the plaintiffs on this point.

A Fuel Test Report No 2

[54] The defendant argued that the absence of water in the Storage tanks (including the Starboard Tank), which were 'Bright & Clear' according to Test 2 results, implies no contamination from these tanks, while the presence of exceptionally high water content (75%) in the Day Tank, three days after ceasing to use the Starboard Tank, suggests the contamination originated elsewhere in the fuel system, not from the fuel supplied by the RLYC. However, this argument fails to consider the entire sequence of events and the operational dynamics of the vessel's fuel system.

[55] The defendant's contention that the absence of water in the Starboard Tank at the time of testing disproves its initial contamination overlooks crucial operational aspects of the vessel's fuel management.

[56] Firstly, the fact that no water was detected in the Starboard Tank during the testing does not irrefutably establish that it was never contaminated. In maritime fuel systems, the fuel from storage tanks, like the Starboard Tank, is typically consumed or transferred over time, especially during long voyages. By the time the samples were taken, it is entirely plausible that any contaminated fuel initially in the Starboard Tank had been used up or removed, thereby explaining its 'clear and bright' appearance in the Test 2 results.

[57] Moreover, the significant water contamination found in the Day Tank is a pivotal piece of evidence. The Day Tank had been receiving fuel from the Starboard Tank until it was quarantined on 13 July 2018. The detection of a 75% water content in the Day Tank, while the other tanks, including the Centre and Port Tanks, showed no such contamination, is telling. This disparity raises a legitimate question: how could the Day Tank exhibit such severe contamination if it was being fed by the same fuel system as the other tanks, which were found to be uncontaminated? This inconsistency points towards the Starboard Tank as the likely source of the contamination.

[58] The defendant's suggestion that the water contamination must have originated from another part of the fuel system after fuel was uplifted from the Storage Tanks is not sufficiently substantiated. This argument fails to address the absence of any reported issues with the vessel's performance after the Starboard Tank was quarantined and the vessel ceased drawing fuel from it. If the contamination had originated from an external source within the fuel system, she would be reasonable to expect continued or recurring issues, which was not the case.

[59] The defendant's assertion that the fuel contamination did not originate from the fuel supplied by the RLYC is significantly challenged by both the

operational history of the vessel and the sequence of events following the contamination incident. Prior to the bunkering at the RLYC, the vessel had successfully completed the Langkawi-Phuket-Langkawi route using fuel from the Day Tank without any reported issues, indicating that the fuel system was functioning effectively until it received fuel from the RLYC. This normal operation was disrupted by the sudden emergence of contamination issues post-bunkering, suggesting a direct correlation between the RLYC fuel uplift and the onset of these problems. Further supporting this assertion is the fact that after the Starboard Tank, which received the bulk of the RLYC fuel, was quarantined, no further performance issues were reported, and the vessel completed her journey uneventfully. Additionally, the lack of defects in the Day Tank, as confirmed by Athif, aligns with the plaintiffs' position that the contaminated fuel likely originated from the Starboard Tank, which was primarily filled at the RLYC.

[60] Therefore, considering the entire body of evidence, including the timeline of events, the dynamics of the fuel system, and the resolution of issues after isolating the Starboard Tank, it is more plausible that the source of contamination was the fuel from the RLYC, as this aligns with both the vessel's operational history and the chronological sequence of events.

[61] The defendant argued, primarily relying on the visual observation of the Starboard Tank being 'Clear & Bright' that there is no presence of any contamination in the Starboard Tank. This notably overlooks the intricacies of maritime fuel analysis, particularly concerning sodium chloride contamination. The Test 2 report, while addressing the presence of water, did not extend its analysis to include testing for sodium chloride. This omission is critical in the context of this case.

[62] In maritime operations, sodium chloride (salt) contamination in fuel can be as detrimental as water contamination, if not more so, due to its corrosive nature and the ability to cause significant damage to engine components over time. Salt contamination, unlike water, may not be readily apparent through visual inspection alone. Therefore, the fact that the Starboard Tank appeared 'Clear & Bright' in Test 2 does not conclusively indicate the absence of sodium chloride contamination.

[63] The defendant's reliance on the absence of visible water contamination to assert that the fuel was free from all contamination is thus fundamentally flawed. The nature of sodium chloride contamination requires specific testing to detect its presence, which was not conducted in Test 2. Without such testing, any assertion regarding the absence of salt contamination is speculative and unsupported by the evidence.

[64] In summary, while the Test 2 report indicated that the Day Tank was contaminated with water and the other tanks appeared clear, this does not conclusively prove the defendant's claim that the contamination did not originate from the fuel supplied by the RLYC. The operational dynamics of the vessel's fuel system, the cessation of issues following the quarantine of the Starboard Tank, and the absence of sodium chloride testing in the Test 2 report collectively support the plaintiffs' contention that the contaminated fuel likely originated from the Starboard Tank and, by extension, from the RLYC.

Fuel Test Report No 3

[65] The defendant's critique of Fuel Test Report No 3 primarily hinges on the delayed sodium testing, the purported uncertainty regarding the source of the samples, and Ronan's alleged lack of objectivity in focusing on the Starboard Tank. The defendant argues that Ronan only instructed a sodium test two years after initially suspecting saltwater contamination and had no direct knowledge of the sample origins. They contend that Ronan's fixation on establishing contamination in the Starboard Tank led to a lack of impartiality in his approach, as evidenced by his disagreement with the test results which indicated sodium content derived from the water layer, not the fuel. This, according to the defendant, contrasts with the approach of the H&M Surveyor, Domnic, who instructed comprehensive testing of all fuel tanks, leading to Test 2, which they argue is the only independent test with a verifiable sample source and which clears the Starboard Tank of contamination.

[66] However, the plaintiffs present a robust counter-argument supported by detailed evidence. The samples for Test 3, labeled 'Day Sump Tank' and 'STBD Day Tank,' were explicitly identified by Ronan as being taken directly from the Starboard Tank and the Day Tank on the day of the incident, 13 July 2018. This identification is corroborated by exh B5(a), which shows Sample Nos 3 and 4 marked as 'DAY TANK (STBD TANK)' taken on 13 July 2018, and the Starboard Tank sample taken around 17 July 2018. Ronan's clarification that there is no 'Starboard Day Tank' and Domnic's statement that there's no 'Day Sump Tank' further affirm the accuracy of the sample labeling.

[67] Test 3's findings of high levels of water and sodium in the Starboard Tank sample, with 50% free water and 10,700ppm of sodium, align with previous tests and the plaintiffs' narrative. Test 1 had already identified the Starboard Tank sample as 'Cloudy, Free Water & Suspended Matter,' and Test 2 found an exceptionally high water content of 75% in the Day Tank, which contained residual Starboard Tank fuel. These consistent results across multiple tests strengthen the plaintiffs' assertion of contamination in the Starboard Tank fuel.

[68] Ronan's theory about saltwater contamination being held in the diesel fuel is not directly contradicted by Nurmaudin's testimony. A

[69] Ronan's theory posits that saltwater contamination, once introduced into the diesel fuel, could be held within it, potentially leading to issues in the vessel's fuel system. This theory is crucial as it underpins the plaintiffs' argument regarding the source of the contamination. Nurmaudin, in his capacity as a chemist conducting the fuel tests, acknowledged that while sodium is typically tested in the water portion of a fuel sample due to its affinity for aqueous solutions, he did not completely rule out the presence of sodium in the diesel portion. This acknowledgment is vital as it leaves room for the possibility that the diesel fuel in the Starboard Tank could have been contaminated with sodium, supporting Ronan's theory. B C

[70] Furthermore, the operational history of the vessel lends credence to this theory. Prior to the incident, the vessel had been operating without reported fuel-related issues. The emergence of problems coincided with the use of fuel from the Starboard Tank, which had been filled at the RLYC. Crucially, after the Starboard Tank was quarantined and ceased being used, the vessel reportedly did not experience further issues, suggesting a direct link between the fuel from this tank and the problems encountered. D E

[71] The results from Fuel Test Reports Nos 1 and 2 further support this narrative. Test 1 identified the Starboard Tank sample as 'Cloudy, Free Water & Suspended Matter,' while Test 2 revealed an exceptionally high water content in the Day Tank containing residual fuel from the Starboard Tank. These findings suggest a pattern of contamination originating from the Starboard Tank. F

[72] Therefore, considering Nurmaudin's testimony in conjunction with the operational history of the vessel and the results of the fuel tests, a compelling case is formed supporting the plaintiffs' claim. The possibility that sodium contamination could be present in the diesel fuel aligns with the sequence of events and test results, all pointing towards the Starboard Tank, filled at the RLYC, as the likely source of the saltwater contamination. This understanding is critical in evaluating the validity of the plaintiffs' position in light of the evidence presented. G H

[73] Therefore, the evidence presented by the plaintiffs, encompassing consistent results from multiple fuel tests and corroborative witness testimonies, forms a cohesive narrative that effectively counters the defendant's claims regarding Fuel Test Report No 3, reinforcing their argument that the Starboard Tank, filled at the RLYC, was the actual source of the fuel contamination. I

Contaminated fuel caused damage

The plaintiffs' contentions

[74] The plaintiffs contended that the damage to the vessel was caused by contaminated fuel onboard. Their evidence is that the H&M Surveyor, Domnic Alexander, concluded, based on his independent inspection and narrative provided, that the probable cause of the engine damage was contaminated fuel. The plaintiffs further contended that local service engineer Athif observed thick grey to black fuel, indicative of contamination by water, which he asserted caused engine damage.

[75] In their submissions, the plaintiffs highlighted that the analysis of Sean Griffin, the electrical mechanical engineer, post-fuel incident inspection confirmed that water in the fuel system led to speed overruns, causing engine damage.

[76] The plaintiffs maintained that Domnic the H&M Surveyor provided a report concluding that the cause of the damage to both the main engine and generator engine was inferior fuel quality. They contended that his assessment linked heavy smoking from the engine exhaust, breakdown in lubrication, and irregular functioning of the fuel injection pump and governor to contaminated fuel.

[77] Further, the plaintiffs submitted that Athif, as an independent witness, confirmed the fuel contamination and concluded that this led to the engine damage. They also maintained that Sean Griffin, in his professional capacity, deduced that the governor malfunction, a common cause of overspeed, was due to fuel contamination.

[78] It is also submitted by the plaintiffs that the defendant's expert, KJ Heer, agreed that water in fuel causes incomplete combustion, damaging the vessel engine.

[79] The plaintiffs also argued that Domnic's independent evidence supported the assertion that seawater ingress into the vessel was not feasible. In contrast, the defendant's expert, KJ Heer, was unable to sustain his hypothesis of water ingress through a leak in the fuel system or a water-cooled heat exchanger, primarily due to his lack of physical inspection of the vessel and the absence of a fuel cooler on the vessel. Therefore, the plaintiffs concluded that the only plausible cause of the vessel's damage was the contaminated fuel.

The defendant's contentions

[80] The defendant contended that the plaintiffs' claim of saltwater in the fuel causing the initial overspeed of the vessel's main engine on 13 July 2018 was unsubstantiated. They maintained that Domnic, engaged to survey the vessel, did not inspect the main engine or the governor and fuel injection system, which were already replaced. The defendant submitted that Domnic acknowledged the possibility of governor or fuel injection system malfunction due to wear and tear, rather than fuel contamination.

[81] Furthermore, it is submitted by the defendant that Domnic did not inspect the electrical systems and suggested that the electrical components could have been damaged by exposure to water from a burst water pipe, not necessarily from overspeed. The defendant also contended that Sean Griffin, who inspected the vessel in Cochin, focused on electrical issues and was not involved in investigating the cause of the overspeed. They maintained that Sean Griffin's opinions on the cause of the overspeed should be rejected due to his close personal and business relationship with Ronan, the plaintiff, and his lack of direct knowledge of the fuel injection system and governor state during the incident.

Analysis and findings

[82] The court's analysis of the plaintiffs and the defendant's contentions are given below.

Evidence of the H&M Surveyor (Domnic)

[83] In determining the cause of the damage to the vessel, the court carefully examined the evidence provided by the H&M Surveyor, Domnic Alexander, an independent expert appointed by the vessel's H&M insurers, Charles Taylor Marine. His task was to assess the nature and extent of any damage sustained to the main engine and generator engine during the vessel's journey from Langkawi, Malaysia to Male, via Cochin, India, and back.

[84] Domnic's findings, as outlined in his Survey Report dated 30 November 2018 and Updated Survey Report dated 1 June 2019, are pivotal to understanding the cause of the damage. His conclusion that the damage to both the main engine and generator engine was due to inferior fuel quality is based on a comprehensive analysis of physical examinations and various records. This conclusion is supported by several key observations:

(a) the heavy smoking observed from the engine's exhaust, which indicates a breakdown in lubrication, causing excessive wear and tear of the Fuel

A Injectors and fuel injection pump. This breakdown, he posits, is a result of the fuel being contaminated with water, compromising its lubricating properties essential for these components;

(b) the malfunctioning fuel injector led to fuel dripping into the B combustion chamber, contaminating the lubricating oil and causing an overflow of oil mixed with fuel;

(c) any irregularities in the functioning of the fuel injection pump would inadvertently affect the governor's operation, leading to engine overspeeds. This overspeeding not only stressed the engine but also C drove the attached alternator to generate high current/voltage, damaging electrical components like the AVR; and

(d) in a bid to reach safety, the crew overused the main engine and generator engine, exacerbating the wear and tear.

D

[85] Furthermore, Domnic's investigation on 1 June 2019, revealed evidence of corrosion on the cylinder head, scoring marks on the cylinder liner, and a seized fuel injection pump. These findings corroborate the theory of lubrication breakdown due to inferior fuel quality. Domnic's experience with a E container vessel in 2019, which suffered similar issues due to poor fuel quality, lends further credibility to his conclusions.

[86] Domnic's findings are corroborated by other experts and eyewitness F testimonies. For instance, the observations of Sean Griffin and the reports from the crew support theory of fuel contamination leading to mechanical failures. The overspeed of the engine on 13 July 2018, as testified by crew member Gunther and detailed in Ronan's statement, further strengthens this conclusion. The fact that the engine revved at 3,000 RPM in the high seas, G beyond its normal operating range, is indicative of a governor malfunction, which, as per the evidence, was likely caused by contaminated fuel affecting the fuel injection pump.

[87] The defendant's contention that the damage could be attributed to H maintenance issues or wear and tear is noted. However, the court finds the evidence supporting this claim less persuasive in comparison to the extensive and detailed evidence pointing towards fuel contamination. While it is acknowledged that Domnic did not personally inspect the damage, as much of it had been repaired, the consistency of the reports and testimonies he relied on I lends credibility to his conclusions. His assessments were informed by the crew's investigations, discussions with local technicians, and the observations of electrical engineer Sean Griffin. The consistency of these accounts with his findings strengthens the conclusion that the vessel's damage was due to fuel contamination.

[88] Additionally, the defendant's assertion that the damage to the electrical systems could have been caused by exposure to water from a burst water pipe is not sufficiently substantiated. The more plausible explanation, in line with Domnic's findings and the overall evidence, is that the electrical damage was a secondary effect of the engine overspeed caused by the fuel contamination.

[89] In summary, the court finds that the comprehensive analysis and conclusions drawn by the H&M Surveyor, Domnic Alexander, provide a convincing and coherent argument supporting the plaintiff's claim. The damage to the main engine and generator engine of the vessel was caused by contaminated fuel, specifically diesel fuel mixed with saltwater. This conclusion is based on a detailed examination of the vessel's condition, the nature of the damage observed, and the expert's corroborated observations and experience.

Evidence of Athif

[90] Athif, an independent MTU technician from Male, Maldives, conducted an inspection of the vessel's engines. His observations and conclusions play a crucial role in this determination.

[91] Athif's testimony, as noted in his report dated 9 September 2018, provides a detailed and technical explanation of the vessel's engine issues following the fuel contamination incident. His observations and conclusions are grounded in his expertise as an engineer specialising in yacht support. Notably, Athif's analysis is based on a visual inspection and the smell of the fuel, both of which led him to unequivocally confirm that the fuel onboard the vessel was badly contaminated. This method of assessment, though rudimentary, lends credibility to his findings.

[92] The court pays special attention to Athif's explanation of the specific mechanical reactions resulting from the contaminated fuel. He described how the engine, upon being restarted after cleaning the fuel filters and changing the fuel, went into overspeed, causing unexpected damages. This detail is crucial as it directly links the engine's malfunction to the contaminated fuel, corroborating the plaintiffs' claim. Furthermore, Athif elucidated how the contaminated fuel likely caused seizure in the injection pump plungers, jamming the rack and rendering the governor unable to control the engine speed. This technical breakdown of the engine's reaction to the contaminated fuel is a compelling piece of evidence supporting the plaintiffs' case.

[93] Additionally, Athif's report elaborates on the broader impacts of the contaminated fuel on the vessel's engine, including erratic running with a knocking sound and the increase in engine oil level due to fuel dripping into

A the cylinders. These observations are not only indicative of fuel contamination but also align with the symptoms of engine damage typically expected in such scenarios.

B **[94]** The defendant's contention raises several points regarding Athif's inspection and conclusions. The defendant highlights that Athif's inspection was based on his observations and information provided by the crew, and that the decision to replace parts was made by the crew, not necessarily because it was the only option but due to the lack of authorised service centres in the Maldives.

C

[95] Moreover, the defendant questions the preservation of the original governor and fuel injectors and injector pumps, suggesting a lack of evidence regarding their condition. Additionally, the defendant points out that Athif's report was prepared significantly later than the events in question and that Athif's conclusion about the fuel being contaminated with jet fuel was based on its smell, rather than a confirmed presence of water.

D

[96] In considering these contentions, the court acknowledges the potential limitations in Athif's inspection and report. However, the court also recognizes the immediacy and practicality of the decisions made by the crew in response to the vessel's condition. Athif's observations, along with his experience and expertise, lend substantial weight to the plaintiffs' case. His findings regarding the main engine's condition, the need for part replacements, and the nature of the damage are in line with the symptoms of fuel contamination.

E

F

[97] While Athif's report may have been prepared later, his contemporaneous actions and decisions at the time of inspection are indicative of his professional judgment regarding the vessel's condition. The fact that Athif suspected jet fuel contamination based on smell does not diminish the plausibility of fuel contamination, especially considering his other observations consistent with a fuel contamination scenario in general.

G

[98] The court also acknowledges the defendant's argument concerning Miru Enterprise's lack of jet fuel provision to the RLYC Marina. While this raises questions about the RLYC's fuel being the source of the contamination, it does not necessarily negate the possibility of the vessel's fuel being contaminated at some point in her supply chain.

H

I **[99]** In sum, the court finds Athif's testimony and report to be a significant and credible source of evidence. His independent status, combined with his professional expertise and detailed account of the engine's condition and behavior following the contamination incident, strongly supports the plaintiffs' claim. The evidence presented by Athif, particularly his technical

analysis of the engine's response to the contaminated fuel, persuasively indicates that the damage to the vessel was indeed caused by contaminated fuel.

Evidence of Sean Griffin

[100] The Court turns its attention to the evidence provided by Sean Griffin. His expert analysis, conducted following the fuel incident, provides crucial insights into the mechanical and operational aspects of the vessel's engines. His explanation of engine overspeed, a condition where the engine operates beyond its specified range, is a key element in understanding the cause of the damage. According to him, the most common cause of overspeed is a malfunction in the governor located within the engine's fuel pump. He further states that this malfunction can lead to significant and costly damage, often resulting in the self-destruction of diesel engines.

[101] Sean Griffin's assessment that the mechanical governor, a crucial component for controlling engine speed, likely failed due to fuel contamination is particularly informative. His rationale is grounded in his extensive experience with diesel engines, where he notes that such governors, composed of weights and springs, are susceptible to failure if exposed to corrosive elements like saltwater. This is a critical point, as it directly connects the observed engine malfunction to the possibility of contaminated fuel.

[102] Sean Griffin's inspection also revealed significant damage to various vessel parts, including the electrical components and the Northern Lights generator. Specifically, the vessel suffered defects in a 120 Amp alternator AVR, a Diode splitter 120 amp, and a blown 300 amp DC fuse. More critically, the generator was found to have seized, indicating a potential for catastrophic system breakdown if not immediately replaced. These findings, detailed in Sean Griffin's report, underscore the extent of the damage sustained by the vessel.

[103] The court notes Sean Griffin's unconventional but telling method of examining the fuel samples provided by Ronan. By tasting the fuel, Sean Griffin detected the presence of salt, which substantiates the claim of fuel contamination. While not a standard scientific test, this practical approach, combined with his technical expertise, lends weight to his conclusions.

[104] Moreover, Sean Griffin's in-depth familiarity with the vessel, gained through his involvement in her commissioning, sea trials, and mechanical and electrical systems, enhances the credibility of his assessment. His understanding of the vessel's specific configurations and operations provides a solid foundation for his conclusions regarding the cause of the engine damage.

[105] Additionally, the evidence presented does not solely rely on Sean Griffin's testimony. The broader context, including the timeline of events and the absence of similar incidents during the vessel's previous voyages, reinforces the likelihood that the contaminated fuel acquired at the RLYC Marina fuel pump was the source of the problem. The correlation between the fueling at this specific location and the subsequent engine and electrical issues presents a compelling argument supporting the plaintiffs' case.

[106] The defendant points out that Sean Griffin's primary task was to address electrical issues and not the engine's mechanical failures. While this is true, it does not negate his capacity to provide an informed opinion on the cause of the overspeed and subsequent damage. His background in power generation and diesel engines qualifies him to make such assessments, even if his immediate task was focused on electrical repairs. Moreover, his inability to physically inspect the failed governor, as it had been replaced prior to his examination, does not significantly undermine the validity of his conclusions, given the broader context of the vessel's condition and the characteristics of the damage observed.

[107] Regarding the contention about Sean Griffin's personal relationship with Ronan potentially biasing his evidence, the court acknowledges this relationship but also notes the absence of direct evidence suggesting that this relationship influenced his professional judgment in this matter. Expert testimony, even from individuals with personal connections, is not automatically disqualified but must be weighed with a consideration of potential biases. In this case, Sean Griffin's professional experience and the logical coherence of his analysis mitigate concerns about bias.

[108] In conclusion, the court finds Sean Griffin's expert testimony and analysis to be both reliable and persuasive, providing a coherent explanation for the engine overspeed and subsequent damage to the vessel. This testimony, coupled with the detection of saltwater in the fuel, substantiates the plaintiffs' claim that the damage was caused by contaminated fuel. The defendant's attempts to discredit this evidence are insufficient to override the compelling narrative established by Sean Griffin's expertise and the corroborating circumstantial evidence.

KJ Heer's expert evidence

[109] The analysis of KJ Heer, as outlined in his report entitled 'Technical Report Regarding the Claim against Langkawi Yacth Club Berhad' dated 11 December 2020 ('the KJH Technical Report') provides valuable insight into the effects of water contamination in fuel. He concedes that the presence of water in the fuel can lead to incomplete combustion, a condition that is known

to potentially cause engine failure. This acknowledgment is significant as it aligns with the fundamental argument of the plaintiffs regarding the cause of the damage to the vessel.

[110] The court notes two critical pieces of evidence that bolster KJ Heer's concession: firstly, the observation by the crew of significant smoke from the engine exhaust, and secondly, the results of Test 2. The presence of 'white smoke,' which KJ Heer identifies as steam indicative of water during the combustion process, is a compelling indicator of water contamination in the fuel system. This observation is critical as it directly correlates the presence of water in the fuel with the malfunction observed in the vessel's engine.

[111] Furthermore, the Test 2 results, which revealed an exceptionally high water content in the fuel sample from the Day Tank, substantiate the claim of water contamination beyond the specified limits. KJ Heer's reliance on these results to assert that the Day Tank was contaminated with water is particularly telling. It suggests a direct link between the contaminated fuel and the engine damage, supporting the plaintiffs' claim.

Conclusion

[112] In conclusion, the court finds that the plaintiffs have met their burden of proof. The preponderance of evidence, including expert testimonies, independent analyses, and physical observations, leads to the inescapable conclusion that the damage to the vessel was indeed caused by contaminated fuel, specifically diesel fuel mixed with saltwater. The defendant's arguments, while raising potential alternatives, do not sufficiently undermine the compelling and consistent body of evidence presented by the plaintiffs. The convergence of this evidence, particularly the detailed and corroborative nature of the testing results and expert analyses, firmly establishes the plaintiffs' case. Therefore, the court concludes that the damage was caused by contaminated fuel.

Whether the damage could have been sustained by a cause(s) other than contaminated fuel from the RLYC marina fuel pump that could not have been within the reasonable contemplation and/or control of the defendant

No other probable cause of contamination

[113] The defendant posited that the vessel damage might have been caused by factors other than contaminated fuel, yet failed to plead any alternative probable cause. In contrast, the plaintiffs provide a coherent and convincing narrative supported by substantial evidence, asserting that the damage was indeed due to contaminated fuel.

[114] The vessel, a Trintella A constructed at the Van De Stadt yard in Holland and classified under Lloyds A1Y category, has been described as robust and sturdy, having voyaged over 30,000 nautical miles since her purchase in 2015. Ronan's testimony asserts that the vessel was maintained in pristine condition through regular and annual maintenance at reputable shipyards, with all maintenance activities diligently recorded in the vessel's log and substantiated by corresponding invoices. This meticulous maintenance regime substantially diminishes the likelihood of vessel damage due to factors other than fuel contamination.

[115] Furthermore, the integrity of the vessel's fuel tanks was thoroughly examined and verified by the Domnic, H&M Surveyor. His inspection covered the underwater hull, Day Tank, and bunkering point, all found to be in good condition with no recent repairs or damage that could compromise the tanks' integrity. Domnic's observations are critical, as they effectively rule out tank defects or damage as a source of seawater ingress into the fuel system. Additionally, his assessment that there was no evidence of unwanted list or trim due to compromised tanks further strengthens this conclusion.

[116] Ronan's evidence also negates the possibility of seawater ingress into the fuel tanks before the incident. He underscores the vessel's robust design, which includes high levels of redundancy in all systems, making seawater ingress highly improbable. This assertion is bolstered by Ronan's meticulous approach to refueling operations and the astonishing amount of water found in the Starboard Tank, suggesting significant contamination.

[117] In contrast, the defendant's expert, KJ Heer, fails to provide a viable alternative explanation for the water ingress. His hypotheses regarding potential leaks in the fuel system or issues with the water-cooled heat exchanger are not substantiated by physical inspection or concrete evidence. This lack of direct evidence from the defendant's expert, combined with the plaintiffs' comprehensive and consistent testimonies, leads this court to conclude that the only probable cause for the vessel's damage was contaminated fuel, specifically diesel fuel mixed with saltwater. The plaintiffs have successfully demonstrated, through detailed maintenance records, expert testimonies, and logical argumentation, that no other cause is plausible under the circumstances presented.

Whether the RLYC supplied the said contaminated fuel from the RLYC marina fuel pump

[118] The overarching contention of the plaintiffs is that the diesel fuel on the vessel was not contaminated at sea during her voyage from Langkawi to Male or it was from any residual fuel already in her storage tanks but instead

came from the RLYC Marina fuel pump. The two possible sources of contamination advanced by the plaintiffs would be the fuel already stored in the RLYC's skid tanks or the ingress of seawater into the fuel delivery line at the RYLC Marina. Either way, the plaintiffs' contention is that the RLYC supplied the contaminated fuel from the RLYC Marina fuel pump. The court will analyse the evidence to determine whether this contention is true. First, it is useful to lay out the specific contentions of the plaintiffs and the defendant in relation to this issue.

The plaintiffs' contentions

[119] The plaintiffs submitted that the independent, direct, and indirect evidence presented consistently demonstrates that the contaminated fuel likely originated from the RLYC Marina fuel pump, as the engine speed overruns and the casualty occurred only after the vessel bunkered at the RLYC and began using the fuel from the Starboard Tank. The plaintiffs argued that the defendant's contentions that the vessel had bunkered from at least two other sources before the incident, that the incident occurred due to the vessel being at sea for 8–9 days after bunkering at the RLYC, that the vessel was burning fuel for about 24 hours before the smoking incident, and that the crew's actions or inactions suggest other reasons for the engine damage, are inherently improbable. In this regard, the plaintiffs contended:

(a) during her annual maintenance at the Northern Shipyard from 25 October 2017 to 21 May 2018, the vessel underwent thorough fuel tank cleaning, fuel system inspection, and comprehensive testing, ensuring her perfect condition for the 1,600 nautical mile voyage to Male, Maldives, as confirmed by Ronan and substantiated by the Northern Shipyard's letter and Ronan's evidence in cross-examination on 2 February 2021;

(b) after thorough cleaning and testing, the vessel bunkered 1,000 litres of high-quality, uncontaminated fuel at Northern Shipyard on 21 May 2018 and an additional 2,600 litres on 22 May 2018, confirmed by Ronan's visual inspection and supported by the absence of contradictory evidence regarding the fuel's condition and quality;

(c) during the sea trial from Langkawi to Yacht Haven Marina Phuket and back, from 26 May 2018–27 June 2018, the vessel's fuel system functioned flawlessly with no water detected and the MTU main engine performed impeccably, as evidenced by maintenance logs and videos showing a clean engine with no emission of white smoke;

(d) after returning to Langkawi on 27 June 2018 and staying until 4 July 2018, the vessel refueled at the RLYC, adding 1,615.85 litres primarily to the Starboard Tank, which had only 100 litres left from Northern

Shipyard fuel, contributing to a total fuel upliftment of 5,200 litres over the periods of 21 May 2018, 22 May 2018, and 4 July 2018 at various tanks;

(e) no sampling or testing of the RLYC fuel was conducted before or after bunkering, as acknowledged by Ronan and Domnic, with the procedures for merchant marine industry not applicable to private yachts and no obligations on Ronan to visually check or sample the fuel, leading to the unanticipated discovery of contaminated fuel from a presumed reputable source like the RLYC;

(f) only after departing Langkawi for Male on 4 July 2018 did the vessel encountered severe engine and electrical system damage due to contaminated fuel from the Starboard Tank, confirmed by investigations in Male and Cochin, with subsequent voyages to Cochin and back to Langkawi being smooth yet with persistently low oil pressure due to the contamination;

(g) the Intertek sample tests showed a high sodium level of 10,700 ppm in the Starboard Tank's fuel (primarily loaded with the RLYC fuel) and 75% water contamination in the Day Tank (drawing mainly from the Starboard Tank), conclusively proving the presence of saltwater in the fuel in the Starboard Tank;

(h) Domnic, the H&M Engineering surveyor, after considering critical facts including the last fuel top-up at the RLYC Marina fuel pump on 4 July 2018 into the Port and Starboard Tanks and the use of fuel from the Starboard Tank until the casualty, concluded that the contaminated fuel with saltwater must have come from the fuel uplifted at the RLYC on 4 July 2018, supported by the vessel's mechanical and structural condition, Intertek test results showing saltwater in the fuel, and the absence of any other probable source of contamination;

(i) Domnic's testimony confirmed that after inspecting the underwater hull, Day Tank, and bunkering point of the vessel, all were found to be in good condition with no damage or recent repairs, indicating the integrity of the fuel tanks, which if compromised, would likely lead to overflow or list/trim, none of which were reported by the crew; additionally, the survey found the filling line closed and the cap intact, eliminating seawater entry through an open filling line;

(j) Ronan and Domnic's evidence, alongside the inherent design of the vessel dismisses any possibility of seawater ingress into the vessel's fuel tanks during the passage to Male, with no hard weather conditions or system design flaws that could lead to such ingress; particularly, the filler points are well-sealed and personally checked by Ronan, further supported by the lack of physical inspection by the defendant's expert, KJ Heer, and the absence of a fuel cooler on the vessel;

(k) there is no evidence of any intervention by the crew that breaks the cause of damage to the vessel from contaminated fuel burnt from the Starboard Tank;

(l) despite Ronan's repeated requests to Tayfun (DW3), the RLYC's GM, for testing the fuel system and integrity of the RLYC Marina fuel pump, no surveys of fuel filters, lab analysis for saltwater contamination, full fuel and system check, or fuel delivery line pressure/vacuum test were conducted, leaving the quality of the RLYC fuel and the condition of its delivery system unverified and likely the source of the contaminated fuel;

(m) the defendant has not provided conclusive evidence of the integrity and quality of the fuel supplied by Miru Enterprise, with no credible proof of pure diesel delivery without additives to the RLYC, and despite requests, no fuel batch certificates were provided to verify the absence of additives or contaminants in the fuel uplifted on 4 July 2018; furthermore, certificates from Malaysian Refining Company (MRC) Sdn Bhd and letters from Petronas and Jabatan Bomba do not confirm the quality or safety of the fuel, and the lack of testing or verification after delivery into the RLYC's tanks leaves the quality of the fuel at the RLYC unverified;

(n) based on sales receipts for fuel purchases at the RLYC Marina from 20 June 2018–21 July 2018, the vessel fuel sale constituted 38.97% of the sales during that period, indicating that larger fuel quantities like this are more likely to draw in saltwater due to lower pressure in the delivery line, as opposed to smaller deliveries which are less likely to create such low pressure and subsequent saltwater ingress; and

(o) the sales receipts from 20 June 2018–21 July 2020 show that most fuel purchases at the RLYC Marina during the relevant period were in small quantities, indicating these might not have been direct bunkering into vessels but possibly jerry can transactions, hence any contamination effects, likely from saltwater ingress in low-pressure situations, would be unnoticeable; this sales data does not disprove the possibility of the RLYC Marina fuel pump being contaminated at the time of the vessel bunkering on 4 July 2018.

[120] The plaintiffs submitted that the poor upkeep, supervision and management of the RLYC bulk fuel installation and fuel pump by the RLYC caused the diesel fuel supplied to the vessel to be contaminated. The plaintiffs contended that the defendant was negligent in controlling, supervising, and managing the RLYC bulk fuel installation and fuel pump, particularly in respect of its duty to supply diesel fuel of good quality and reasonably fit for its purpose to its boats. This conclusion is drawn from multiple factors including the RLYC's lack of proper licensing, negligent management by its former general manager, absence of regular maintenance of the fuel facilities, the

defendant's indifferent response to contamination concerns, the defendant's delayed inspection of the vessel, and the defendant's failure to comply with a court order for specific discovery related to the fuel system's integrity. Specifically, it is contended by the plaintiffs:

(a) it is undisputed that the RLYC, operated by the defendant, lacked the requisite license to supply fuel at the time of the incident, as confirmed by a letter from Kementerian Perdagangan Dalam Negeri ('KPDN') dated 18 February 2020, and the defendant's defence that Miru Enterprise, the actual supplier, had the necessary approvals does not extend this permit to the RLYC, with no proof of any other permit authorising the RLYC to supply fuel at the RLYC Marina;

(b) the former GM of the RLYC, Tayfun, demonstrated negligent management of the RLYC bulk fuel installation, evidenced by his lack of experience in marine fuel facility management, failure to acknowledge or act upon initial alerts about possible fuel contamination, no detailed system review of the bulk fuel installation, inability to explain fuel sales suspension in 2019 or provide evidence of any system integrity tests, and neglecting to share fuel test reports with Ronan or check fuel filters on other boats;

(c) the evidence indicates that there was no regular maintenance of the RLYC's fuel tank facility and fuel delivery lines, with no records produced to confirm the integrity of the fuel pump maintained by a third-party contractor, and Tayfun's confirmation that fuel lines/tanks maintenance by the RLYC was not evidenced, nor was the maintenance manager responsible for these tasks called as a witness;

(d) from the outset of the fuel incident, Ronan diligently sought the defendant's cooperation to investigate potential fuel contamination, but the defendant displayed complete disinterest and lack of care, ignoring initial alerts, showing reluctance to survey fuel filters or provide fuel batch certificates, and failing to conduct promised lab tests or provide results, indicating a dismissive attitude towards a serious complaint and potential legal claim;

(e) the defendant was invited by Ronan to inspect the vessel at Boustead Shipyard Langkawi to verify the claim of the RLYC fuel causing damage, but did not utilise this opportunity until September 2020, two years later, suggesting a lack of genuine interest in validating the plaintiffs' claim and more of a delayed attempt to bolster its defence; and

(f) despite an order for specific discovery dated 17 February 2020, the defendant failed to disclose documents verifying the integrity of the fuel tank and delivery system at the RLYC Marina, only providing partial discovery that did not attest to the legality, serviceability, and integrity of

the RLYC fuel installation and system, leading to the presumption that full disclosure would have confirmed vulnerability to contamination.

[121] The plaintiffs disputes the defendant's argument that the contaminated fuel did not come from the RLYC Marina fuel pump, highlighting that other boats bunkering at the same pump without incident, the lack of additives in fuel according to batch certificates, the petrotechnical report clearing the defendant fuel of contamination, and the possibility of contamination occurring on the vessel during fuel usage, are not sufficiently supported by evidence. In summary, the plaintiffs' contentions in this regard are:

(a) the testimony of Asyraf (DW1) and Raden (DW4) about bunkering their vessels 'Manta Blu' and 'Gadis Pulao' without issues must be cautiously considered, as their fuel uplift dates of 19 July 2018 and 25 July 2016 are well after the incident and not contemporaneous, with no evidence to prove the fuel was the same as on 4 July 2018, no prior fuel sampling, significantly smaller fuel quantities uplifted, and lacking detailed evidence about their vessel's engine systems for a direct comparison with the vessel;

(b) the petrotechnical report, which tested a fuel sample taken in November 2018 from a different batch than the one used by the vessel in July 2018, cannot prove that the fuel supplied around 4 July 2018 was free from contamination, and its relevance to the case is questionable due to both the timing of the sample and the lack of evidence on the integrity of the sampling process, including the absence of a standard procedure at the RLYC for fuel contamination cases;

(c) the fuel batch certificates, as testified by Maswadi (DW7) of Miru Enterprise, do not display salt content, thereby failing to negate the possibility of sodium contamination in the fuel supplied by Miru Enterprise, nor do they eliminate the chance of contamination occurring at the RLYC fuel installation or during the refueling process after delivery; and

(d) Ronan firmly dismissed any possibility of contamination occurring within the vessel's fuel system before returning to the Day Tank, describing it as a closed system where fuel conveyed directly from each injector unit to the Day Tank cannot pick up contaminants along the way.

The defendant's contentions

[122] It is submitted by the defendant that the consistent supply pattern of Petronas diesel to the RLYC, the absence of contamination complaints from numerous other vessels fueling at the marina, and the findings of KJ Heer's inspection refuting Ronan's hypothesis of saltwater contamination through the

fuel delivery system, collectively indicate that the fuel system at the RLYC Marina was not contaminated with saltwater when the vessel was fuelled. In summary, it was submitted:

(a) Maswadi confirmed that Miru Enterprise has been supplying Petronas diesel to the RLYC via road tanker since 2002, with delivery records showing a consistent supply pattern to the RLYC Marina's skid tank around the time the vessel bunkered fuel on 4 July 2018, including deliveries on 2 May 2018, 23 May 2018, 1 June 2018, 12 June 2018 (last batch before 4 July 2018), 22 July 2018, 13 August 2018, and 5 September 2018, and during June to August 2018, numerous vessels actively received fuel from the RLYC Marina, with a total of 81 sale receipts accounting for 17,456 litres of diesel;

(b) Ronan does not question the quality of the fuel delivered to the RLYC's skid tank but hypothesises that the fuel became contaminated during delivery to the fuel pump through the delivery line, suggesting saltwater contamination via joints or pinholes in the pipeline; however, if this were true, all vessels fueling at the RLYC Marina would have experienced similar issues, as the fault in the delivery line would have been consistent;

(c) between January 2018 and April 2019, there were about 751 instances of fuel uplifting at the RLYC's fuel pump with no complaints of contamination, despite other vessels like 'Manta Blu' and 'Gadis Pulao' bunkering large quantities of fuel around the same time as the vessel, contradicting the hypothesis of contaminated fuel originating from the RLYC Marina fuel pump;

(d) Ronan hypothesised that saltwater contamination in the fuel delivery system at the RLYC Marina occurred due to leaks and low pressure, but this was refuted by KJ Heer's inspection, which found no evidence of such contamination, supported by tide table data and the absence of other complaints about fuel quality, leading to the conclusion that saltwater did not contaminate the fuel system when the vessel refueled; and

(e) Ronan hypothesised that saltwater contamination in the fuel delivery system at the RLYC Marina occurred due to leaks and low pressure, but this was refuted by KJ Heer's inspection, which found no evidence of such contamination, supported by tide table data and the absence of other complaints about fuel quality, leading to the conclusion that saltwater did not contaminate the fuel system when the vessel refueled.

[123] It is submitted by the defendant that the vessel's fuel management and record-keeping are fundamentally flawed and unreliable, as demonstrated by Ronan's inconsistent and inaccurate statements regarding fuel tank capacities

and usage, the unexplained excess of fuel, discrepancies in fuel uplifts and actual amounts at various checkpoints, and the lack of concrete evidence linking alleged fuel contamination to the RLYC, all pointing to a systemic issue in fuel tracking and a possible manipulation of facts, thereby questioning the accuracy of the vessel's fuel consumption and distribution records and demonstrating that the RLYC did not supply any contaminated diesel fuel to the plaintiffs, but instead the vessel picked up seawater during the voyage. In summary it was contended:

(a) Ronan relied on Domnic's survey report to suggest contaminated fuel with saltwater from the RLYC Marina fuel pump caused damage to the vessel, but this conclusion is questionable due to inaccurate facts provided by Ronan, including incorrect usage of the Starboard Tank and lack of objective bunkering records, leading to unreliable conclusions in the absence of proper documentation and consistent fuel usage evidence;

(b) the blueprint of the vessel shows a Day Tank capacity of 127 litres, but Ronan's evidence about its usable capacity has varied, with figures of 123 litres in his undated statement, 106 litres in WS-PW1, 90 litres in WS2-PW2, and 96/97/100 litres in Ronan's evidence in cross-examination, indicating inconsistencies and a lack of reliable record-keeping or a tendency to adjust figures as needed;

(c) there are substantial inconsistencies in Ronan's testimonies regarding the vessel's fuel consumption from May to July 2018, as seen in conflicting details about fuel uplift amounts at Northern Shipyard and CB Trading Fuel Barge, varying distributions across starboard, centre, and port storage tanks, discrepancies in reported burn rates and tank capacities, and contradictions between Ronan's multiple statements and recalculations, notably in relation to the fuel usage during voyages from Langkawi to Phuket and onwards to Male, thereby questioning the credibility and accuracy of his account of the vessel's fuel management;

(d) there is a doubt raised by the defendant regarding Ronan's fuel management for the vessel's voyage to Male, as he recorded a starting fuel capacity of 4,490 litres (4400 in storage tanks and 90 in the Day Tank) but documented a total fuel usage and offloading of 5,097.5 litres, which includes 3,960 litres consumed by the main engine over 264 hours, 127.5 litres by the generator over 12.75 days, 60 litres drained following smoke detection on 13 July 2018, and 950 litres offloaded in Male, resulting in an unexplained excess of 607.5 litres, casting doubts on the accuracy of his calculations and fuel management, and underscoring the importance of missing Fuel Uplift Logs for clarifying this discrepancy; and

(e) discrepancies in Ronan's testimony about the vessel's fuel management, including claims of 600 to 700 litres of fuel in the isolated Starboard Tank conflicting with 950 litres being drained, the late emergence of water contamination after seven uplifts, the improbability of such a large volume of fuel being solely from the Starboard Tank when the Port Tank was dry, and the lack of similar contamination issues in the Port Tank or evidence of such issues at the RLYC Marina, all strongly suggest that the saltwater contamination found in the vessel's fuel system, which contradicted fuel capacity and management records, did not originate from the marina.

The court's analysis and findings

Day tank capacity

[124] The defendant highlights apparent inconsistencies in Ronan's testimony regarding the usable capacity of the Day Tank, with figures varying from 90 to 123 litres. However, the focus must remain on the significance of these discrepancies in the context of the case's core issues.

[125] Ronan's testimony, clarifies that the Day Tank, despite its blueprint capacity of 127 litres, typically accommodates about 97 litres per uplift cycle. This operational limitation is crucial in determining fuel consumption, which is central to the dispute. This materiality in the circumstances supersedes absolute precision in numerical data. As the 'balance of probabilities' is the standard of proof in civil cases, slight variations in Ronan's statements do not significantly diminish the credibility of his testimony regarding the operational usage of the Day Tank.

[126] Therefore, while acknowledging the variations in Ronan's statements, these discrepancies do not undermine the material fact — that the Day Tank's practical usage in terms of fuel consumption calculations is around 97 litres per cycle. This figure is more relevant than the maximum capacity or the various figures cited by Ronan in different statements.

[127] Regarding the defendant's claim that these inconsistencies indicate a lack of record-keeping or opportunistic testimony, this assertion is speculative without concrete evidence. Variations in reported figures could reasonably occur due to operational factors, estimation errors, or other practical realities of managing fuel uplifts.

[128] In conclusion, the plaintiffs' stance is strengthened by the material evidence on the Day Tank's operational capacity, as the defendant's focus on

numerical inconsistencies fails to significantly dispute Ronan's testimony on its practical implications for fuel consumption.

Fuel usage records of the vessel from Northern Shipyard to Male is consistent

[129] As for the issue of consistency of the fuel records of the vessel, the evidence presented by the plaintiffs convincingly establishes a coherent and logical narrative of the vessel's fuel usage from Northern Shipyard to Male, effectively countering the defendant's assertions.

[130] Firstly, regarding the initial fuel loading at the Northern Shipyard on 21 May 2018, there is consensus that 1,000 litres were loaded into the Centre Tank, with a subsequent consumption of 113 litres during the mini sea trial, leaving a balance of 887 litres. The defendant does not dispute these facts, establishing a baseline for the vessel's fuel management.

[131] At the second checkpoint, the defendant challenges the veracity of the fuel distribution, particularly the uplift of 2,600 litres from the Northern Shipyard barge on 22 May 2018. However, the plaintiffs' evidence, supported by the Yacht Log and Ronan's Undated Statement, clearly indicates that this fuel was indeed distributed between the Starboard and Port Tanks. This is further corroborated by Ronan's testimony. The defendant's claim of inconsistency in Ronan's statements regarding the fuel distribution is not substantiated when the contemporaneous records are considered. Ronan's detailed breakdown in WS2-PW1 of the fuel distribution post uplift, which aligns with the vessel's operational requirements, demonstrates a logical and consistent fuel management approach, contrary to the defendant's assertion of fabrication or alteration of facts.

[132] Moving to the events at Yacht Haven Marina in Phuket, Thailand, and the subsequent voyage to Langkawi, the defendant argues that Ronan's recollections of the fuel usage are contradictory. However, the consistency in Ronan's undated statement and the later testimonies regarding the fuel burn of 780 litres during this period holds up under scrutiny. The defendant's assertion that Ronan's account in WS2-PW1, which details a different distribution of fuel burn between the Starboard and Port Tanks, is self-serving, is not persuasive. It is reasonable to consider that Ronan's more detailed recollection in WS2-PW1 is a result of a closer examination of the records and events, rather than an attempt to manipulate the facts.

[133] The bunkering event at the RLYC on 4 July 2018 stands as a significant point in the narrative of the vessel's fuel management. The plaintiffs' evidence and the testimony of Ronan consistently assert that 1,615.85 litres of fuel were uplifted, predominantly into the Starboard and Port Tanks, with the Centre

Tank receiving a top-up. This is further supported by the plaintiffs' notice of demand, which specifically states that the fuel uplifted at the RLYC was directed 'primarily' into the Starboard Tank. This underscores the consistency in the vessel's fuel management approach, which had been previously established.

[134] On the other hand, the defendant challenges this narrative, particularly focusing on Ronan's recalculations presented in WS2-PW1. It contends that these recalculations are inconsistent with Ronan's earlier undated statement. However, this argument does not find solid ground when considering the practicalities of maritime operations. The need for continuous adjustment and the dynamic nature of managing a vessel's fuel supply can often necessitate revisions in calculations and estimations. In this context, Ronan's later, more detailed account in WS2-PW1 appears as a refined understanding of the vessel's fuel usage, rather than an inconsistency.

[135] Moreover, the defendant's arguments regarding discrepancies in fuel burn rates and the speculative nature of the 'white smoke' issue lack substantial evidence. The Yacht Log provides objective data showing the shift in the Day Tank uplift from the 'Mid' tank to the Starboard Tank, followed by the observation of 'cloudy fuel' and 'steaming exhaust.' This sequence of events is in line with Ronan's evidence and is independently corroborated, thus providing a credible account of the events leading up to the smoke observation. The absence of any proven alternate cause for the 'white smoke,' as well as the lack of evidence for water ingress into the vessel or crew negligence, further weakens the defendant's position.

[136] In conclusion, the plaintiffs' comprehensive and consistent evidence, supported by detailed log entries and witness testimonies, coherently and logically counters the defendant's claims of inconsistency and alteration, leading the court to find in favour of the plaintiffs regarding the consistency of the vessel's fuel records.

No excess fuel on the vessel

[137] On the issue of the alleged excess fuel on the vessel, the defendant contends that the vessel must have obtained additional fluid after departing from the RLYC with full tanks, as per the calculations provided by Ronan. The defendant's argument hinges on the disparity between the fuel quantity at the commencement of the voyage and the amount at its conclusion in Male.

[138] This court, after thorough examination of the evidence and arguments presented, finds the position of the plaintiffs to be more credible and substantiated. Ronan, who possesses extensive knowledge and experience in

the vessel's operations, has consistently argued that the fuel consumption calculations are based on a conservative and reasonable estimation of 15 litres per hour, acknowledging a minor margin of error. This estimation importantly takes into account the variable nature of fuel consumption, which is influenced by a combination of wind and motor power. Ronan's testimony explicitly notes that the vessel's average speed was about 5.25 knots, but experienced significant fluctuations ranging from 2 to 40 knots, directly impacting the rate of fuel consumption.

[139] The RLYC's claim of an 'excess' fuel onboard the vessel upon her arrival in Male is robustly refuted by the detailed explanation provided by Ronan, the Master of the vessel. Ronan's argument, grounded in his extensive experience and expertise, convincingly attributes any perceived surplus fuel at the journey's end to considerable savings achieved during the voyage, particularly during periods of favourable sailing conditions. This assertion is crucial in understanding the dynamics of fuel consumption on such voyages.

[140] Ronan's testimony elucidates that the vessel, during her journey from the RLYC to Male, significantly relied on wind power, a mode of propulsion that inherently consumes no fuel. This reliance on wind power was notably prominent while the vessel navigated across the northern tip of Sumatera, a segment of the voyage where favourable wind conditions enabled the vessel to sail without the aid of her motor. This efficient use of natural wind power, as opposed to motor-driven propulsion, undoubtedly contributed to the conservation of fuel, thus explaining the seemingly surplus fuel at the conclusion of the journey.

[141] Further reinforcing Ronan's explanation is his emphasis on the variability of fuel consumption in relation to several factors, including wind assistance and engine revolutions per minute. Ronan's analysis demonstrates that fuel consumption is not a static figure but fluctuates based on these external and operational conditions. This is particularly pertinent in the context of the vessel's voyage, where she experienced a wide range of speeds — from as low as spell knots to as high as 40 knots. Such variations in speed, influenced by wind conditions and engine usage, inevitably lead to differences in fuel consumption rates. The periods of high wind assistance would have reduced the need for motor power, thereby decreasing fuel usage.

[142] Moreover, Ronan's account of the vessel's engine management post the fuel incident on 13 July 2018 further substantiates the claim of reduced fuel consumption. Following this incident, the engine was deliberately operated at a lower RPM (1,000 RPM), which is estimated to have resulted in a 20% reduction in fuel consumption, a strategic decision aimed at conserving fuel while ensuring safe navigation. This operational change would have had a

significant impact on the vessel's overall fuel consumption, as running the engine at a lower RPM is known to reduce fuel usage substantially.

[143] The defendant's suggestion of the vessel obtaining additional fluid post-departure from the RLYC is speculative and not substantiated by concrete evidence. Ronan's testimony as the Master of the vessel is both detailed and technical, demonstrating a comprehensive understanding of the vessel's fuel consumption under varying conditions. His expertise and direct involvement in the vessel's operations provide substantial credibility to his testimony and calculations.

[144] In conclusion, the plaintiff's position, buttressed by Ronan's detailed and technical testimony, offers a logical and coherent explanation for the fuel levels recorded at the end of the voyage. The court finds no compelling evidence to challenge the accuracy of Ronan's calculations or his assertion that no additional fuel was obtained after departing the RLYC. Accordingly, the court finds that there was no additional fluid obtained by the vessel. The evidence presented by the plaintiffs and their witness, Ronan, is accepted as more credible and convincing over that of the defendant's contention.

The fuel did not become contaminated during voyage

[145] In addressing the other contentions raised by the defendant regarding the source of the saltwater contamination in the fuel of the vessel, the court examines the evidence and arguments presented by both parties. The defendant posits that the contamination did not originate from the RLYC Marina, suggesting instead that it entered the vessel's fuel system post-departure. This hypothesis largely hinges on interpretations of Ronan's testimony regarding fuel uplift and consumption calculations for the voyage from Langkawi to Male.

[146] In the context of the defendant's reliance on speculative theories, particularly the suggestion by KJ Heer regarding water ingress into the vessel's fuel system, the court finds such theories to be insufficiently substantiated by objective evidence. KJ Heer's theory posits that water could have entered the fuel system during the voyage, but this hypothesis lacks concrete support from independent sources. It is primarily based on conjecture rather than empirical data or thorough investigation.

[147] Contrastingly, the plaintiffs present compelling evidence from Domnic, the H&M Surveyor, which provides a detailed and objective assessment of the vessel's condition. This evidence, is instrumental in understanding the actual state of the vessel's hull and tanks. The H&M

Surveyor conducted a thorough inspection of the vessel, focusing on the integrity of her fuel tanks, hull, and other relevant components that could potentially be sources of water ingress.

[148] Key findings from the H&M Surveyor's report significantly challenge the defendant's argument. The surveyor found no defect or damage to the vessel's fuel tanks, bunkering points, hull, or any other areas that could feasibly allow seawater to infiltrate the fuel system. Notably, the Day Tank was found to be intact, the bunkering point in good condition, and there was no evidence of recent repair works that might suggest past damage and subsequent fixes. These findings are crucial as they directly address and refute the possibility of seawater contamination occurring during the voyage due to structural failures or malfunctions.

[149] Furthermore, the Domnic's report confirms that the filling line, a potential entry point for water, was closed and the closing cap intact. This detail is significant as it rules out one of the more plausible means by which water could have entered the fuel system while at sea. Additionally, Domnic explained that given the fuel tanks' location below the waterline and their relatively small size, any significant defect leading to seawater ingress would likely result in the tanks being filled and overflowing, or causing the vessel to list or trim noticeably. No such occurrences were reported by the crew, further supporting the integrity of the tanks and hull.

[150] Domnic's observations that the filler points for the fuel tanks are securely sealed after refueling, coupled with Ronan's practice of ensuring these caps are tightly fitted, adds another layer of assurance against accidental water ingress. Moreover, the absence of any issues with the fuel for the remaining part of the passage to Male and subsequent journeys implies that the problem was isolated and did not persist, which would be unlikely if there was an ongoing issue with water ingress into the fuel system.

[151] The court gives considerable weight to the condition of the vessel following her maintenance at the Northern Shipyard. This maintenance, which is meticulously documented in the invoices and corroborated by Ronan's testimony, is crucial in assessing the vessel's condition at the time of the alleged contamination. Ronan's testimony, along with the detailed invoices, provides a comprehensive record of the maintenance work carried out, underscoring the thorough nature of the upkeep and the attention given to ensuring the vessel's seaworthiness.

[152] Ronan, in his capacity as the Master of the vessel, testified to the rigorous and regular maintenance schedule of the vessel. He emphasized the meticulous care taken to maintain the engines and equipment, ensuring that

the vessel remained in prime condition for sea travel. This testimony is not just a general assertion of the vessel's condition but is supported by specific details of the maintenance work undertaken, as reflected in the invoices from the Northern Shipyard. The extensive nature of this maintenance, covering various aspects of the vessel's machinery and systems, reinforces the argument that the vessel was in optimal condition when she left the shipyard.

[153] The findings of the H&M Surveyor further substantiate the plaintiffs' position regarding the vessel's condition post-maintenance as explained above. Moreover, the Domnic's inspection revealed no evidence of recent repair works to the vessel's hull or tanks that might indicate past damages and subsequent fixes. This absence of recent repairs is a critical point, as it suggests that the vessel was not only well-maintained but also free from significant structural issues that could compromise her integrity and lead to issues like water ingress.

[154] An aspect of the plaintiffs' argument, which the court finds persuasive, is the analogy likened to a situation in a restaurant where only one patron, having consumed a substantial portion of contaminated food, shows symptoms of food poisoning. This analogy, provided by the plaintiffs, aptly illustrates the situation with the Starboard Tank, which took in the majority of the 1,615.85 litres of fuel uplifted at the RLYC. The fact that issues were observed only in the Starboard Tank, despite both the Port and Starboard Tanks receiving fuel from the same source, suggests that the scale of uptake was a determining factor in the manifestation of contamination.

[155] The evidence regarding the fuel from the Port Tank is important in assessing the validity of the defendant's contention about the source of the saltwater contamination. According to Ronan, the fuel from the Port Tank was of acceptable quality and did not cause any operational issues for the vessel for the remainder of her journey. This point is not merely anecdotal but is based on Ronan's direct experience and observation as the Master of the vessel.

[156] If the fuel uplifted at the RLYC had been contaminated with saltwater, it stands to reason that both the Port and Starboard Tanks, having been refueled from the same source, would exhibit similar contamination issues. However, Ronan's testimony clearly indicates that the fuel from the Port Tank did not exhibit any signs of contamination or cause any performance issues. This disparity in the condition of the fuel in the two tanks is a strong indicator that the source of the contamination was not the fuel uplifted at the RLYC.

[157] Furthermore, Ronan's account is supported by the operational performance of the vessel post-refueling. The fact that the vessel was able to continue her journey without any reported issues attributable to the fuel from the Port Tank is a compelling argument against theory of widespread

contamination from the RLYC fuel uplift. This operational evidence is a practical demonstration of the fuel's quality and contradicts the hypothesis of contamination at the source.

[158] In conclusion, the court finds that the saltwater contamination occurred pre-departure from the RLYC and from the marina itself, a decision grounded in a thorough evaluation of all evidence and the operational context of the vessel's journey from Langkawi to Male.

No fuel filter survey was done by the defendant

[159] The court now turns to the issue of whether the integrity of the RLYC fuel and the good working condition of the RLYC Marina fuel pump was tested, verified, or proved by the defendant.

[160] Ronan's testimony provided a detailed explanation of the procedures and technical aspects required for ensuring the integrity of fuel and the operational condition of fuel pumps, particularly in a marina setting such as the RLYC. The absence of a fuel filter survey, as shown by the plaintiffs, is a critical factor in the court's assessment. A fuel filter survey, as described by Ronan, is a process that checks the condition of the bulk tank primary filters. This process is essential for determining the level of contaminant blockage, which could affect the pressure in the delivery hose leading to the dockside fuel pump unit. The testimony of Ronan makes it clear that without this survey, it is impossible to ascertain the level of blockage and, consequently, the likelihood of low pressure forming in the delivery hose. The presence of any leak in the system would allow salt water to be drawn into the fuel delivery line, particularly given its length and routing under the floating dock.

[161] Furthermore, Ronan highlighted that the fuel delivery line, over 200 metres in length and running under the floating dock, should be subjected to annual pressure and vacuum tests. This standard operational procedure is critical for maintaining the integrity of the fuel delivery system. The absence of such testing raises significant concerns regarding the maintenance and operational standards upheld by the RLYC.

[162] The court notes a critical missed opportunity in verifying potential blockage in the fuel filters after the contamination incident. Such blockage, if present, could have resulted in saltwater being drawn into the fuel delivery line. The fuel survey would have eliminated this possibility. This omission becomes particularly significant given that the defendant did not provide an explanation for its failure to conduct a survey of the fuel filters. This oversight is detrimental to the defendant's position, as it raises doubt about the integrity of the fuel delivery system. The lack of such verification contributes to the court's

A assessment that the fuel contamination could have occurred through the fuel delivery line, a possibility that remains unaddressed.

No fuel and system check

B **[163]** There is also a lack of a comprehensive fuel and system check on the fuel delivery system which could have ascertained if saltwater contamination was in the fuel, but this was not done.

C **[164]** Ronan explained the constituents of a 'full fuel and system check' which encompasses filter inspections, fuel delivery line pressure/vacuum testing, pump calibration, and tank closure integrity assessments. Such a comprehensive check is critical to ascertain the presence of contaminants like saltwater in the fuel system. However, it was noted that this essential procedure D was not undertaken by the defendant, as evidenced by the absence of any record of such checks, especially around the critical date of 4 July 2018, when fuel was uplifted to the vessel.

E **[165]** Furthermore, Ronan requested from Tayfun, the GM of the RLYC, copies of the RLYC fuel sales for the two weeks before and after the said upliftment date. This information was crucial to determine if saltwater contamination could have been a factor during this period. The lack of response to this request, as noted in Tayfun's recap email to Ronan dated 6 November 2018, is a significant omission in the evidence gathering process. F

[166] The necessity of a full fuel system check becomes even more evident considering the specific circumstances at the RLYC. The fuel delivery line, extending over 200 metres along the waterfront and under the floating dock, G raises a reasonable possibility of seawater intrusion due to low pressure in the system. This potential is further supported by the factors outlined: the relative positioning of fuel tanks and the dock, the potential clogging of primary filters, the powerful suction capability of the dock delivery unit, the absence of water-detecting monitor type filters, and the likely formation of low pressure in H larger deliveries. Additionally, the possibility of saltwater ingress through damaged sections of the delivery line, which could result in a 'corrosion eruption' compromising the line's integrity, is a substantial risk.

I **[167]** Given these factors and the lack of routine pressure/vacuum tests for such a long delivery pipe run, as suggested by Ronan and supported by visual evidence from the photographs and video of the vessel fuelling at the RLYC Marina, the court finds a marked deficiency in the evidence necessary to demonstrate the satisfactory operational condition of the RLYC Marina fuel pump when the fuel was supplied to the vessel. This lack of evidence,

particularly the omission of regular and essential maintenance checks, significantly undermines the assurance of the fuel pump's integrity at the crucial time of fuel provision.

No fuel delivery line pressure/vacuum test

[168] The next inquiry is on the issue of the lack of a routine fuel delivery line pressure/vacuum test at the RLYC, essential for verifying system integrity and preventing seawater contamination. This is significant as the lack of such a test suggests a probable source of contaminated fuel from the RLYC fuel pump.

[169] The defendant's failure to conduct a fuel delivery line pressure/vacuum test, a fundamental and routine integrity check, is a key point to consider by the court. The absence of this test, which is customarily expected to be conducted annually, particularly in environments where fuel lines are in close contact with salt water, raises significant concerns. The procedure, involving the disconnection and draining of the supply line from the bulk tank, sealing the line, and then subjecting it to a pressure test of approximately 100 psi followed by a vacuum test at about minus 5–10 psi, is designed to ascertain the integrity of the fuel delivery system. It is a basic preventive measure against the ingress of contaminants such as seawater.

[170] Notably, there is a stark absence of any evidence or documentation indicating that such a test was ever conducted at the RLYC Marina. The lack of a fuel delivery line pressure/vacuum test certificate, which would be issued by a suitably qualified and competent service provider, is telling. This omission is not a trivial oversight but a substantial neglect of routine maintenance and safety protocols. Given these circumstances, the likelihood of the contaminated fuel having originated from the RLYC fuel pump is significantly high. This neglect directly implicates the defendant, demonstrating a failure to ensure the integrity and good working condition of the RLYC Marina fuel pump as is their duty. Therefore, in consideration of the evidence presented and the lack of requisite testing by the RLYC, the conclusion is drawn that the defendant has not proven the integrity of the RLYC fuel nor the good working condition of the RLYC Marina fuel pump.

Quality and integrity of fuel supplied by Miru Enterprise is not verified

[171] The defendant has provided certificates of quality from their supplier, Miru Enterprise and test results indicating no saltwater presence in the fuel. However, these evidentiary pieces are insufficient to dispel the concerns regarding the fuel's condition supplied to the plaintiffs on 4 July 2018.

[172] The defendant has not positively proved the integrity and quality of the fuel supplied by Miru Enterprise. While the certificates of quality and fuel batch certificates were provided, there is a lack of credible proof that the fuel delivered to the RLYC was free from additives or contaminants. The plaintiffs requested specific information about the fuel batch supplied on 4 July 2018, which was not satisfactorily provided at the time. The certificates of quality from Malaysian Refining Co Sdn Bhd ('MRC') , disclosed during the specific discovery process, do not definitively answer questions about the quality of the fuel in question.

[173] Additionally, the letter from Petronas dated 24 June 2019 and the Jabatan Bomba letter dated 9 May 2019 do not verify the quality or safety of the fuel supplied at the RLYC. These documents, including the Petronas letter supporting Miru Enterprise's application for a Scheduled Controlled Goods Permit, do not endorse or verify the quality of the bunkers supplied by Miru Enterprise to the RLYC. Furthermore, the fact that these documents are from dates after the incident in question further undermines their relevance to the plaintiffs' claim.

[174] The plaintiffs' assertion that there is no sample taken and tested after delivery into the RLYC bulk fuel installation to confirm the fuel's quality is a significant concern. The absence of a standard sampling procedure and testing to verify the fuel's integrity after delivery into the RLYC tanks raises the possibility of contamination post-delivery.

[175] Moreover, the possibility of contamination through the fuel delivery line to the fuel pump located on the pontoon cannot be ruled out. The lack of a pressure/vacuum test on the fuel delivery line, as pointed out by the plaintiffs, leaves open the possibility of saltwater contamination through joints or possible pinholes in the pipeline.

[176] In light of the above considerations, the court finds that the quality and integrity of the fuel supplied by Miru Enterprise to the RLYC have not been adequately verified. This lack of verification, combined with the absence of robust procedures to ensure the fuel's quality post-delivery, leads to the conclusion that the fuel supplied to the plaintiffs may not have been free from the risk of contamination at the material time.

The RLYC's lack of requisite licence to supply fuel

[177] In considering the material provided, it is evident that the RLYC, operated by the defendant, lacks the requisite licence to supply fuel, a fact which is undisputed and affirmed by both parties. The absence of this licence,

as confirmed by KPDN in their letter dated 18 February 2020, is not merely a technical omission but signifies a fundamental disregard for the regulatory framework governing the supply of fuel, specifically under the Petroleum Development Act 1974. This disregard for statutory requirements raises serious concerns about the defendant's commitment to maintaining the standards necessary for the safe and lawful operation of fuel supply facilities.

[178] The defendant's contention that the fuel supplied at the RLYC Marina comes from Miru Enterprise, which possesses the necessary approvals, does not absolve the defendant of its legal obligations. The fact that Miru Enterprise's licence authorises it to provide bunkering services does not extend such authority to the defendant to supply fuel at the RLYC. The evidence, including the testimony of Maswadi, further clarifies that while Miru Enterprise may supply fuel to the RLYC, it is the club that sells this fuel to boaters, thereby engaging in an activity that requires a separate licence.

[179] The lack of a licence has broader implications beyond the mere act of selling fuel. It suggests a potential lapse in the adherence to standards and regulations that are essential for the safe operation of fuel supply facilities. The plaintiffs have raised legitimate concerns about the quality of the fuel supplied, specifically alleging that saltwater contaminated fuel was supplied to the vessel, causing damage. The defendant's lack of a licence and, by extension, potential non-compliance with the regulatory standards, is indicative of poor upkeep or maintenance of the bunkering facilities at the RLYC Marina, which substantiates the plaintiffs' claims of contamination.

[180] Moreover, the defendant's argument that the licensing issue is immaterial to the question of liability is unpersuasive. While the primary claim of the plaintiffs relates to the contaminated fuel, the absence of a licence is a relevant factor in assessing the overall operational standards and practices of the RLYC. It is a reasonable inference that an entity which disregards one aspect of the regulatory framework (such as obtaining the necessary licence) may also neglect other crucial aspects, such as maintenance of the fuel supply system, which directly pertains to the plaintiffs' claim of contamination.

[181] The evidence presented by the plaintiffs, including the confirmation of the absence of a licence and the testimony regarding the resale of fuel by the RLYC at a profit, establishes a prima facie case that the defendant has not only breached statutory requirements but also potentially compromised the integrity of the fuel supply, leading to the alleged damages. In the case of *Ahmad Fuad bin Abd Rahman v Shell Malaysia Trading Sdn Bhd* [2017] 11 MLJ 650; [2016] 1 LNS 1034, the court held that it was not necessary for a party to be prosecuted and convicted of a criminal offence to be violating a law. In this case there was sufficient evidence presented in the respondent's case suggesting

A that the appellant had indeed breached the law by selling petrol to customers in quantities exceeding the legally permitted limit. This decision underscores that evidence of law violation can be established in a civil context without the necessity of a prior criminal conviction. The defendant's violation of statutory requirements without a conviction can therefore be considered in assessing civil
B liability.

[182] In conclusion, while the absence of a licence may not, in itself, be the cause of the alleged damages, it is a significant factor in assessing the overall conduct and practices of the defendant. This factor lends credence to the
C plaintiffs' claims and casts doubt on the defendant's assertion that the licensing issue is irrelevant to the question of liability. The absence of the licence, in fact, forms a crucial part of the context within which the plaintiffs' claims are to be evaluated.

D

Negligent management of the RLYC fuel installation

[183] On whether there was negligent management of the RLYC fuel installation by the defendant, the evidence demonstrates a series of managerial
E failures and omissions that significantly support the plaintiffs' claim of negligence and the consequent risk of contamination at the RLYC fuel installation.

[184] The performance of Tayfun indicates a lack of necessary experience and
F expertise in managing a marine fuel facility. His apparent disregard for the inherent risks associated with diesel fuel supply, particularly in the context of a marine environment, is concerning. The plaintiffs' initial alerts regarding potential contamination were met with indifference, reflecting a failure to
G appreciate the gravity of such concerns. This attitude not only compromises the safety and reliability of the fuel supply but also exposes boaters, including the plaintiffs, to significant risk.

[185] Tayfun's failure to conduct a detailed system review or reassessment of
H the bulk fuel installation during his tenure further underscores a negligent approach to the management of the facility. The lack of regular, thorough inspections and assessments of fuel installations is a critical oversight, especially given the potential consequences of fuel contamination in marine environments.

I

[186] Furthermore, Tayfun's admission that the bulk fuel installation was out of service, coupled with his inability to recall or explain the reasons for the suspension of fuel sales in 2019, raises serious concerns about the overall maintenance and operational standards at the RLYC. The absence of proper

documentation or records regarding these operational issues and the remedial actions, if any, taken in response, is indicative of a systemic failure in the management of the facility.

[187] The failure to understand the critical nature of the fuel pump setup and maintenance, as evidenced by Tayfun's responses in cross-examination, further reinforces the claim of negligent management. The decision to decline an inspection of the vessel in Male, citing cost concerns, and the lack of any substantiated report or evidence confirming the integrity of the fuel system, demonstrates a failure to undertake due diligence.

[188] Moreover, Tayfun's failure to share fuel test reports with the plaintiffs, his lack of checks on other boats' fuel filters, and the absence of any fuel delivery line, pressure, or vacuum tests, which could have easily identified leaks leading to seawater contamination, are significant omissions. These actions, or lack thereof, are indicative of a disregard for standard operational procedures essential in maintaining the safety and integrity of a fuel supply system.

[189] In light of the above, the evidence clearly points to a poorly supervised, managed, and maintained the RLYC fuel installation under Tayfun's tenure. This negligent management created an environment where the risk of fuel contamination was not adequately addressed or mitigated, thereby substantiating the plaintiffs' claims. Consequently, the plaintiffs have successfully established that the RLYC fuel installation was not free from the risk of contamination at the material time, primarily due to the negligent management practices of the RLYC's management.

No maintenance of the RLYC fuel installation by the defendant

[190] The plaintiffs have raised significant concerns regarding the supervision, management, and maintenance of the RLYC fuel installation. Upon careful examination of the evidence presented, it is apparent that there are substantial deficiencies in the management and maintenance of the RLYC fuel installation, which supports the plaintiffs' position that the installation was not free from the risk of contamination at the material time.

[191] The evidence indicates a notable absence of regular or any maintenance of the RLYC fuel tank facility and fuel delivery lines. The upkeep of the fuel pump, conducted by a third-party contractor, should have been documented to confirm the integrity of the fuel pump. However, the absence of such records raises serious concerns about the state of maintenance and the potential risks associated with the fuel system. The General Manager, Tayfun, confirmed that

A the fuel lines and tanks were maintained by the RLYC, yet the evidence shows no maintenance records or evidence of proactive measures to ensure the system's integrity.

B **[192]** Furthermore, the lack of evidence regarding the maintenance of the fuel system, particularly considering its installation on a floating pontoon, highlights a neglectful approach to a critical aspect of the facility's operation. The assumption that a new system installed in 2015 would not require regular maintenance is flawed and demonstrates a lack of understanding of the necessary standards for maintaining such facilities.

C

[193] The non-appearance of the maintenance manager, who was responsible for the upkeep of the fuel tank facility and delivery lines, is also telling. The fact that the new maintenance manager was not called as a witness, despite being in a position to provide crucial evidence about the maintenance standards and practices at the RLYC, invites scrutiny under s 114(g) of the Evidence Act 1950. Section 114(g) of the Evidence Act 1950 allows the court to presume that evidence not produced would, if produced, be unfavourable to the person who withholds it. The failure to produce evidence from a key witness responsible for the maintenance of the fuel installation suggests a deliberate withholding of information that could potentially discredit the integrity of the RLYC fuel system. The court, therefore, is inclined to draw an adverse inference that the testimony of the maintenance manager, if produced, would have been unfavourable to the defendant.

D

E

F

[194] In conclusion, the RLYC fuel installation was poorly supervised, managed, and maintained, thereby not free from the risk of contamination at the material time. This supports the plaintiffs's contention that the defendant's failure to maintain and properly manage the fuel installation significantly contributed to the risk and potential occurrence of fuel contamination.

G

Lackadaisical attitude and inaction on the part of the RLYC

[195] It is important to meticulously examine the sequence of events and the defendant's response to the plaintiffs' concerns about fuel contamination in the court's consideration of whether the RLYC fuel installation was not free from the risk of contamination at the material time.

H

[196] Beginning with the initial alert on 14 July 2018, the plaintiffs, through Ronan communicated to the defendant about potential fuel contamination, specifically following the fuel uplift on 4 July 2018. This communication was made via satellite telephone while Ronan was still at sea en route to Male, Maldives. The lack of prompt and adequate response from the defendant at this stage set a precedent for subsequent interactions.

I

[197] Subsequent communication on 19 July 2018, through direct emails to Tayfun, the RLYC General Manager, and Azrin (DW5), the RLYC Harbourmaster, did not result in any substantive investigation or action from the defendant. This inaction continued despite Ronan's specific requests for a survey of the fuel filters and fuel batch certificates, which were crucial in verifying whether the fuel was contaminated.

[198] Even after the plaintiffs initiated legal action, the response from the defendant remained insufficient. The sales receipts and bunker quality certificates provided through specific discovery did not conclusively confirm the quality of the fuel uplifted on 4 July 2018. Tayfun's promise to send a fuel sample for analysis and his failure to follow through or communicate the results further exemplify the defendant's lack of commitment to addressing the issue.

[199] Notably, a meeting in November 2019 between Ronan and Tayfun did not yield any investigative action from the defendant. The plaintiffs had reasonably expected the defendant to conduct various tests, including a physical inspection of the vessel, a survey of the fuel filters of other the RLYC customers, a lab analysis for saltwater contamination, and a comprehensive check of the RLYC bulk fuel installation, including a pressure/vacuum test of the fuel delivery line. The failure to conduct these tests, particularly in light of a serious allegation of fuel contamination, is indicative of a dereliction of duty by the defendant.

[200] The evidence suggests that the RLYC, as the operator of a public marina servicing numerous boaters, had a significant responsibility to ensure the quality and safety of its fuel supply. The potential risks associated with contaminated fuel — to vessels, their occupants, and the environment — necessitate a high standard of care, which the defendant failed to meet.

[201] In light of the evidence presented, and considering the defendant's inadequate response to the contamination claim, this court is compelled to draw an adverse inference under s 114(g) of the Evidence Act 1950. This inference is drawn from the defendant's failure to produce critical evidence that could have clarified the quality and integrity of the fuel supplied. The court presumes that such evidence, if it had been produced, would have been unfavorable to the defendant.

[202] Therefore, the lack of appropriate action and verification by the defendant in response to the plaintiffs' complaints substantiates the plaintiffs' claim.

Fuel delivery line inspection by Heer

[203] The plaintiffs have raised significant concerns about the potential for saltwater contamination in the fuel delivery system at the RLYC. The plaintiffs' hypothesis, primarily based on Ronan's analysis using the RLYC photographs and Google Earth imagery, raises substantial concerns about the possibility of the fuel delivery pipe coming into contact with seawater. Ronan posited that due to the layout of the RLYC property and the location of the fuel tanks, there was a strong likelihood of the delivery line contacting seawater. He further suggested that given the presence of a powerful suction pump and the absence of water-detecting filters, low pressure could form in the delivery line during refueling, potentially allowing seawater ingress through any compromised areas of the pipeline.

[204] However, KJ Heer, the defendant's expert, who physically inspected the fuel installation at the RLYC, concluded that the chance of saltwater entering the marina fuel system was remote. His conclusion was based on the conditions of the fuel dispensing system, its separation from water sources, and the pressure dynamics within the system. While KJ Heer's inspection provides some insights, it is critical to note that his examination occurred two years after the incident, raising questions about the applicability of his findings to the situation at the time of the incident.

[205] The plaintiffs have correctly pointed out that an expert report on such a matter would typically detail the equipment's specifications and conduct a thorough examination to verify its suitability. The absence of such detailed information in the KJH Technical Report, along with the lack of documentation such as original design drawings, certification documents, and maintenance records, undermines the comprehensiveness and credibility of the report. The report's failure to specify critical aspects of the fuel system, such as the make and type of the pump, the internal condition of the bulk storage tank, and the specific characteristics of the delivery hose, leaves significant gaps in the assessment of the system's integrity.

[206] Furthermore, the plaintiffs' observation that the fuel delivery hose runs along the floating dock, potentially in contact with seawater, is a crucial point. The absence of routine pressure testing and inspection records for the delivery hose, as well as the lack of clarity on the hose's material and compliance with certification standards, raises the possibility of undetected damage and subsequent contamination.

[207] Regarding KJ Heer's conclusion that the possibility of saltwater ingress into the fuel delivery system is remote, it is pertinent to consider that his inspection occurred two years after the incident. Changes or repairs made to

the fuel system since the incident could significantly alter the current state of the system compared to its condition at the time of the alleged contamination. KJ Heer's failure to cross-reference his findings with records or information from the time of the incident limits the relevance of his conclusions to the plaintiffs' claim.

[208] In conclusion, considering the lack of detailed and contemporaneous inspection of the RLYC fuel installation, the absence of critical technical information, and the potential changes to the fuel system since the incident, the court finds that the defendant has not conclusively demonstrated the absence of risk of contamination in the fuel supplied on 4 July 2018.

The petrotechnical report is insufficient to dispel the plaintiffs' claim of contamination

[209] The defendant relied on the petrotechnical report issued by Petrotechnical Inspection (M) Sdn Bhd to counter the plaintiffs' claims of contamination. The report explains that:

> This test (nature of water) is a qualitative method where we can't define the quantity of water in the diesel sample. It could only indicate whether sample contains seawater (contaminated) or freshwater (not contaminated).
>
> In order to know the water content, we need to undergo water by Karl Fischer analysis (ASTM D6304).
>
> The test limit for water content is 550ppm max (0.05%)

[210] However, upon careful analysis, this court finds that the petrotechnical report does not provide conclusive evidence to negate the plaintiffs' claim of contamination.

[211] Firstly, the timing of the sample testing raises significant concerns about the relevance of the petrotechnical report to the plaintiffs' case. The fuel sample tested was taken in November 2018, approximately four months after the incident in question. This time gap is critical, as Azrin, the harbourmaster of the RLYC conceded that the sample was likely from a different batch of fuel than what was supplied to the plaintiffs' vessel. Consequently, the test results, which indicated an absence of saltwater, cannot be reliably linked to the fuel batch in dispute.

[212] Furthermore, the methodology and integrity of the sampling process employed by the defendant are questionable. The petrotechnical report lacks detailed information on the sampling date, the quantity of samples taken, and the specific location from which these samples were extracted. The absence of a witness account, particularly from Naren, who was responsible for taking the

A sample, further diminishes the credibility of the testing process. Additionally, the lack of a fixed standard operating procedure for fuel contamination cases at the RLYC, as noted by Azrin, compounds these concerns, casting doubt on the representativeness and integrity of the samples tested.

B **[213]** Another significant shortfall in the petrotechnical report is the omission of testing for sodium contamination. This specific analysis is crucial in determining the presence of saltwater in the fuel. Without this critical component, the report's ability to conclusively rule out saltwater contamination is severely limited.

C

[214] The court also notes the delay in the disclosure of the Petrotechnical test results to the plaintiffs. The results were not shared at the time of the initial complaint but were only revealed during the discovery stage of the proceedings.
D This lack of timely disclosure adds to the concerns regarding the transparency and thoroughness of the defendant's response to the contamination allegations.

[215] In light of these findings, the court concludes that the petrotechnical report, along with the associated testing and documentation provided by the
E defendant, fails to adequately refute the plaintiffs' claim of contaminated fuel. The absence of relevant, timely, and comprehensive testing, coupled with procedural shortcomings in the sampling and testing process, leads to the finding that the defendant has not convincingly demonstrated the integrity of the fuel supplied on 4 July 2018.

F

No other complaints by other the RLYC customers

[216] It is contended by the defendant the RLYC that there is an absence of
G other complaints about fuel contamination at the RLYC, which they argue precludes the possibility of the plaintiff's fuel being contaminated. However, this line of reasoning is not compelling for several reasons.

[217] Firstly, the evidence of other users of the marina, specifically Asyraf and
H Raden, who did not encounter issues with the fuel, cannot be accepted without reservation. The plaintiffs have raised pertinent points in this regard. Notably, the quantities of fuel uplifted by these vessels were significantly smaller than that of the plaintiff's vessel. The 'Manta Blu' and 'Gadis Pulao' uplifted 157 litres and 857.89 litres respectively, compared to approximately 1,600 litres by
I the plaintiff's vessel. It is reasonable to accept that smaller quantities of fuel are less likely to create the conditions necessary for saltwater ingress, as hypothesised by the plaintiffs. This hypothesis, suggesting that low pressure in the delivery line caused by larger quantities of fuel could result in saltwater contamination, remains unrefuted.

[218] Furthermore, the operational patterns of the 'Manta Blu' and 'Gadis Pulao' differ significantly from the plaintiff's vessel. Their relatively short journeys and low fuel consumption do not compare to the vessel's longer voyage from Langkawi to Male, spanning 1,616 nautical miles. This difference in operational patterns means that even if there was a contamination issue, it might not have manifested in the same way or to the same degree in these smaller vessels.

[219] The defendant's argument about the presence of other 'large deliveries' is also not entirely convincing. The absence of complaints from these deliveries does not necessarily imply the absence of a problem. It is pertinent that the defendant did not produce any evidence from these other boaters who undertook large deliveries. This absence of corroborative testimony from other users who uplifted similar quantities of fuel weakens the defendant's position.

[220] Additionally, the evidence provided by Asyraf, a crew member of 'Manta Blu', does not cover the period post-August 2018. Therefore, his testimony does not account for any potential issues that might have arisen after his tenure with 'Manta Blu'. This gap in the evidence is significant, especially considering the timeframe of the alleged contamination incident involving the vessel.

[221] Moreover, the defendant's lackadaisical approach to addressing the plaintiffs' claim raises doubts about the thoroughness of their investigation into the matter. It suggests the possibility that if there were complaints, they might not have been adequately addressed or disclosed.

[222] Lastly, the unexplained closure of fuel sales at the RLYC from May to September 2019 is a critical point. The absence of sales during this period is conspicuous and unaccounted for by the defendant. This gap in sales activity could suggest that there were underlying issues with the fuel quality, which necessitated the cessation of sales.

[223] In conclusion, while the defendant has attempted to refute the claims of fuel contamination by pointing to the absence of other complaints and the evidence of other marina users, this argument is not sufficiently persuasive. The plaintiffs have raised several valid concerns and inconsistencies in the defendant's assertions, casting doubt on the reliability of the defendant's claim that the absence of other complaints conclusively rules out the possibility of contamination.

KJ Heer's expert evidence

[224] The court now focuses on the evaluation of expert evidence provided by KJ heer for the defendant. The crux of the matter rests on the reliability and validity of Heer's testimony, which the defendant heavily relies on to refute the allegation that the contaminated fuel originated from the RLYC pump. The forthcoming examination of Heer's testimony, therefore, seeks to ascertain its adherence to these judicial standards, contrasting it with the plaintiffs' expert evidence to determine the more credible and reliable account of the events in question.

[225] The core of this evaluation hinges on the principles laid out in *Whitehouse v Jordan and another* [1981] 1 WLR 246 (HL) and further emphasised in *Batu Kemas Industri Sdn Bhd v Kerajaan Malaysia Tenaga Nasional Bhd* [2015] 5 MLJ 52 (CA), which mandate that an expert witness should provide independent, unbiased opinion within their area of expertise and base their conclusions on factual data rather than assumptions.

[226] In *Whitehouse v Jordan* and further endorsed in *Batu Kemas Industri Sdn Bhd v Kerajaan Malaysia Tenaga Nasional Bhd*, key principles guiding the role of an expert witness in legal proceedings were established. These principles emphasise that an expert witness should provide independent, objective, and unbiased opinions within their field of expertise. It is critical that they do not assume the role of an advocate in court. They are expected to clearly state the facts or assumptions upon which their conclusions are based and not omit any material facts that might undermine their opinion. Furthermore, an expert must clarify when a question or issue is beyond their expertise. If their opinion is based on insufficient data, this limitation must be acknowledged, indicating that such an opinion is provisional. Finally, if an expert witness's report cannot be presented as the complete and unqualified truth, any qualifications to this effect should be clearly stated in the report. These guidelines underscore the importance of transparency, thoroughness, and objectivity in expert testimony.

[227] As exemplified by the case of *Al-Ambia Sdn Bhd v Foremost Prospect Sdn Bhd & Anor* [2019] MLJU 1246 (HC), there are fundamental principles that govern the credibility and effectiveness of expert testimony. Firstly, it is crucial that an expert's observations and opinions are rooted in detailed investigations that are specific to the case, rather than being based on general assumptions. This specificity ensures that their testimony is directly relevant and applicable. Secondly, experts must possess deep and pertinent knowledge in the field related to their testimony. Endorsing or critiquing reports without adequate expertise in the relevant area can significantly diminish the validity of their testimony. Thirdly, any criticisms or support for findings should have a solid scientific and empirical foundation. Experts are expected to disclose the

rationale and evidence that underpin their conclusions. Fourthly, the qualifications and experience of an expert should align closely with the subject matter of their testimony. This alignment is essential for their opinions to be considered credible and authoritative. Additionally, when experts challenge accepted findings, such as certified designs or processes, they must provide substantial supporting evidence or calculations to validate their claims. Lastly, the acknowledgment of existing quality checks, certifications, and compliance processes, particularly when they are part of industry standards or legal requirements, is essential. These practices, when adhered to, ensure that the expert testimony provided is not only reliable but also adds significant value to the judicial decision-making process.

Independence of KJ Heer's testimony

[228] Firstly, the evidence presented calls into question the reliability and independence of KJ Heer's testimony. The crux of the plaintiffs' claim revolves around the allegation that the fuel supplied at the RLYC Marina was contaminated with saltwater, rendering it unfit for use. KJ Heer, appointed by the defendant, was tasked with investigating this claim and providing an expert opinion on the matter. However, the manner in which KJ Heer approached his assignment raises significant concerns regarding his impartiality and the thoroughness of his investigation.

[229] KJ Heer's focus, as outlined in the defendant's expert affidavit and during his re-examination, was to examine the integrity of the RLYC fuel installation and the possibility of contamination. However, rather than conducting a comprehensive investigation of the entire fuel installation system at the RLYC, KJ Heer's efforts appear skewed towards refuting the possibility of contamination in the Starboard Tank. This approach is indicative of a bias towards disproving the plaintiffs' claim rather than objectively assessing the integrity of the RLYC fuel installation.

[230] The reference to the plaintiffs' letter of demand dated 25 July 2019 in the KJH Technical Report, where KJ Heer attempts to disprove the contamination of the Starboard Tank, further cements the perception that his report was not an impartial technical analysis, but rather a defense against the plaintiffs' allegations.

[231] Moreover, KJ Heer's methodology in addressing key questions is telling. In questioning whether the Starboard Tank was primarily filled with fuel from the RLYC Marina, KJ Heer disregarded crucial data regarding fuel quantities uplifted at Northern Shipyard and the RLYC as stated in Ronan's statement. He also discredited the vessel's log entry from 22 May 2018 and relied on

speculative calculations to challenge the plausibility of the Starboard Tank being primarily filled with the RLYC fuel.

[232] In examining the contamination of the fuel in the Starboard Tank, KJ Heer selectively considered evidence. He accepted parts of the Test 2 results while dismissing Test 3 results due to an error in labeling, which showed a high sodium content in the Starboard Tank. His conclusion that the fuel bunkered at the RLYC pump could not have been contaminated appears to be based on selective evidence and an unwillingness to consider all relevant data.

[233] Finally, KJ Heer's hypothesis regarding the source of the water-contaminated diesel, which he attributes to potential leakage into the vessel's fuel system, is unsupported by physical inspection or credible data. His speculation about the cause of the contamination, such as physical damage, corrosion, or poor workmanship, lacks substantiation and strays from his original scope of engagement.

[234] Given these observations, it is evident that KJ Heer's opinion is not only biased in favour of the defendant but also fails to address the core aspects of his appointed task. The lack of a thorough and independent investigation into the RLYC bulk fuel installation and the selective approach to evidence significantly undermines the credibility of his testimony. As such, this court finds KJ Heer's evidence to be lacking in the impartiality and rigour expected of an independent technical expert.

KJ Heer's expertise

[235] Next the question of KJ Heer's expertise in the field of bulk fuel installations is central to the assessment of the credibility and weight of his evidence. The Supreme Court's guidelines in *Junaidi bin Abdullah v Public Prosecutor* [1993] 3 MLJ 217 provide a pertinent framework for evaluating an expert witness's qualifications. The two-pronged test mandates that the witness must possess the necessary skill through academic qualification or experience, particularly when the subject matter is of a scientific and complex nature.

[236] Upon examination of KJ Heer's qualifications and experience, several critical deficiencies become apparent. Firstly, KJ Heer, during cross-examination, admitted to his lack of experience in the operation and management of bulk fuel installations. This case marks his first foray into reviewing and reporting on such a matter. His curriculum vitae further corroborates this lack of familiarity with bulk fuel installation inspection and testing protocols. This absence of relevant experience is significant given the specialised nature of the field and the complexity of the issues at hand.

[237] Furthermore, KJ Heer's approach to the investigation of the RLYC fuel installation system raises concerns. His failure to examine installation records and documentation, such as statutory licence and calibration records, indicates a lack of thoroughness in his inquiry. The absence of such critical data in his report and evidence undermines the reliability of his conclusions.

[238] KJ Heer's inspection of the RLYC fuel pump, conducted over two years after the incident, does not provide a reliable basis for assessing the installation's condition at the time of the alleged contamination. The removal of one of the fuel tanks used during the period in question further complicates the matter, as it may suggest undisclosed issues with the installation.

[239] Moreover, KJ Heer's focus on superficial aspects of the fuel installation, without a comprehensive check of its condition, suitability, and integrity, indicates a lack of depth in his analysis. His dismissal of alternative hypotheses, such as the possibility of saltwater penetration, without adequate consideration, further questions the robustness of his findings.

[240] Given these factors, it is evident that KJ Heer's opinion lacks the necessary foundation in expertise and impartiality required for this court to rely upon it. His testimony does not meet the standards set forth by the Supreme Court for expert evidence, particularly in a matter involving the scientific and technical complexities of bulk fuel installations. Consequently, this court finds KJ Heer's evidence to be insufficient and unreliable for the purposes of the present case. The plaintiffs' claim, therefore, stands unrefuted by credible expert testimony from the defendant's side.

Fuel consumption level

[241] In assessing the evidence regarding the vessel fuel consumption levels, it is pertinent to examine the technical details provided by Ronan and the corresponding analysis by KJ Heer. Ronan's testimony, supported by the MTU company's power curve graph for the 1993 MTU V8 Diesel engine and Bosch fuel injector pump, part number 0401 848 708, offers a detailed and technically grounded assessment of the vessel's fuel consumption.

[242] Ronan's explanation, based on the MTU power curve from the vessel's manual, indicates that the engine, rated at 206 kW/280 hp at a maximum of 2,300 RPM, consumes fuel at a rate of 15 litres per hour. This consumption rate is corroborated by the vessel's actual fuel consumption history during the passage from Langkawi to Male. The detailed calculation provided by Ronan takes into account the distance travelled, average speed, and operational hours, both with and without motor usage. This meticulous accounting, including adjustments for generator use, the reduction in fuel burn due to a lower RPM

following the incident, and the loss of fuel due to contamination, leads to a total estimated fuel burn of 4,087.5 litres, leaving approximately 500 litres upon arrival in Male. The disposal of the contaminated fuel, as indicated by the invoice from Greenizon Pvt Ltd, and the conditions during the passage, which were not flat water but moderate to occasionally rough, further validate these calculations.

[243] In contrast, KJ Heer's approach to estimating the vessel's fuel consumption is based on a standard propeller power curve and lacks the specific technical details of the vessel's propeller. His decision not to seek the propeller technical information, which he deemed difficult to obtain, and to rely on his own opinion leads to two critical errors in his assumptions. Firstly, his equating of 1,200 RPM to an 80% power setting contradicts the MTU power curve, which indicates that 1,200 RPM corresponds to 63% of maximum power. Consequently, his second assumption regarding the fuel burn at this power setting is also erroneous.

[244] KJ Heer's acknowledgement of the uncertainties in boat propulsion estimates, particularly regarding propeller characteristics and the use of sails, ultimately leads him to adopt the 15 litres per hour scenario, which aligns with Ronan's analysis. However, the initial discrepancies in KJ Heer's assumptions and his methodological approach cast doubt on the reliability of his conclusions.

[245] Given the comprehensive and technically substantiated evidence provided by Ronan, in contrast with the less precise and ultimately conforming analysis by KJ Heer, the court finds Ronan's testimony regarding the vessel's fuel consumption to be more credible and accurate.

Fuel quantities uplifted at the RLYC Marina

[246] The next inquiry concerns the fuel quantities uplifted at the RLYC Marina. The primary evidence in question pertains to the fuel uplifts and consumption of the vessel from the re-launch at Northern Shipyard on 21 May 2018 to her refueling in the RLYC on 4 July 2018. The plaintiffs have provided a detailed account, supported by Ronan's sworn testimony and corroborated by contemporaneous records, of the fuel transactions and consumption. It is noted that on 21 June 2018, following a maintenance period, all fuel storage tanks, including the Day Tank, were thoroughly inspected and cleaned, with a starting fuel level of nil. Subsequently, fuel was uplifted on 21 May 2018 and 22 May 2018, with detailed records of the quantities added to each tank.

[247] The plaintiffs present a logical and well-documented progression of fuel levels, including consumption during a sea trial and a round trip to Phuket,

resulting in a total onboard fuel of approximately 2,706.5 litres upon arrival at the RLYC. Before departure from the RLYC, Ronan confirms that all tanks were refilled, bringing the total onboard fuel to 4,490 litres, considering a minor calculated fuel error of 79 litres, which is deemed acceptable within the margins of specific gravity variations and gauge errors.

[248] On the other hand, KJ Heer challenges the completeness and accuracy of these records. He contests the total quantity of fuel bunkered on 22 May 2018, relying on a fuel invoice which states 2,256 litres were uplifted, a figure he deems as independent third-party evidence. However, KJ Heer disregards the more credible yacht log entry dated 22 May 2018, which indicates 2,600 litres were uplifted. The court observes that KJ Heer's reliance on the fuel invoice is undermined by Ronan's explanation that this invoice is incorrect and was issued by the fuel supplier, not the Northern Shipyard. The reliability of the crew's log entry is bolstered by the lack of motivation for recording an incorrect figure and the consistency of this entry with other evidence.

[249] Moreover, KJ Heer's assumption of a higher fuel burn rate during the sea trial lacks substantiation and contradicts the plaintiffs' consistent and plausible calculations based on a fuel burn rate of 15 litres per hour. His conclusion that a significant quantity of fuel in the tanks is unexplained and from an unknown source is predominantly based on the contested fuel invoice. This reliance on a single piece of evidence, which is contradicted by other credible evidence, casts doubt on the independence and thoroughness of KJ Heer's investigation.

[250] In conclusion, the court finds the plaintiffs' account of the fuel uplifts and consumption to be coherent, consistent, and supported by a preponderance of evidence. The detailed records, sworn testimony, and logical progression of fuel levels present a convincing narrative. Conversely, KJ Heer's arguments and reliance on disputed evidence are insufficient to undermine the plaintiffs' position. Therefore, the court decides in favour of the plaintiffs, accepting their account of the fuel quantities uplifted at the RLYC Marina and their subsequent consumption calculations as accurate and reliable.

KJH Technical Report

[251] KJ Heer conducted a physical inspection of the fuel installation system on 7 October 2020 and 8 October 2020, as documented in the KJH Technical Report. However, there are significant concerns about the thoroughness and technical rigour of this report. The lack of detailed information about the equipment, such as make, type, part number, and age, as well as the absence of a detailed examination of the equipment's specifications, undermines the

credibility of the report. Additionally, there is also omission of critical data, including the original design drawings, maintenance records, and electrical bonding arrangements.

[252] The court observes that the report does not provide a detailed description of the component parts of the fuel system, such as the delivery pump, the bulk storage tank, and the delivery hose. This lack of detail is crucial, especially in a marine environment where equipment is subject to harsh conditions and requires regular inspection and maintenance to ensure safety and functionality. The absence of a safety bund for the bulk diesel tank is also a notable omission, as it is a standard requirement for preventing environmental contamination.

[253] Moreover, the lack of routine system inspections, including delivery hose inspection and pressure vacuum testing, raise doubts about the ongoing compliance of the RLYC fuel installation with industry standards and regulations. The absence of documentary evidence supporting the certification, testing, calibration, or licensing of the installation further supports the position that the installation may not have been maintained to industry standards.

[254] KJ Heer's report does not verify the integrity, condition, and quality of the RLYC bulk fuel installation adequately. His conclusion that a full critical evaluation of the bulk fuel installation is unnecessary seems to disregard essential factors that could affect the quality of the fuel. The potential for the fuel delivery line to come into contact with seawater and the possibility of leaks are significant concerns, especially in light of the observation that part of the delivery line runs along a floating dock.

[255] The court finds Ronan's hypothesis concerning the pressure dynamics during the refueling process, which could lead to contamination under certain conditions, to be a compelling argument. The lack of a vacuum test to determine the presence of leaks in the fuel delivery line further weakens the reliability of KJ Heer's conclusions.

[256] In conclusion, the evidence presented by KJ Heer in his report is insufficient to dismiss the concerns raised by Ronan regarding the potential for fuel contamination. The KJH Technical Report fails to provide a comprehensive and detailed analysis of the RLYC bulk fuel installation, and thus does not meet the standards expected of an expert report in this context.

White smoke observations

[257] The court now examines the evidence and opinion of KJ Heer related to the observation of white smoke, a key indicator of contamination.

[258] KJ Heer acknowledges that white smoke signifies the presence of water during combustion. However, he raises two contentions: firstly, that if saltwater was in the Starboard Tank, it should have been visible almost two days before the engine damage, and secondly, that the absence of visible white smoke for an extended period suggests water entered the fuel system after the Starboard Tank was drawn upon. Furthermore, he implies negligence on the part of Ronan and his crew for allowing the engine to run for more than a day under these conditions.

[259] Ronan, on the other hand, provides a different perspective. He clarifies that the smoke observed was not merely steam but thick grey diesel smoke indicative of damage due to incomplete combustion. This observation was made and reported immediately after drawing fuel from the Starboard Tank for over a day, aligning with the timeline of the engine's exposure to the contaminated fuel. Ronan attributes the incomplete combustion and resulting smoke to severe damage to the injector pump plungers and the cylinder head's injector units, likely caused by water in the fuel. This explanation is supported by Athif's Report, which refers to the 'drip factor' associated with incomplete combustion due to water presence.

[260] Furthermore, Ronan contests KJ Heer's suggestion of crew negligence, stating that the heavy grey smoke was immediately reported upon observation and that there was no visible smoke the previous evening. This account is corroborated by other crew members, Gunther (PW4), Vinita Mala, and Amit, who were present during the incident. Ronan's explanation that the smoke increased dramatically during engine overspeed and persisted even after switching to clean fuel from the port/centre tanks suggests a problem that originated from the previously used Starboard Tank.

[261] In conclusion, the court finds Ronan's account more credible and consistent with the symptomatic behaviour of an engine running on contaminated fuel. The immediate reporting of the issue by the crew upon observation, and the specific nature of the smoke described, align with the technical explanation provided by Ronan and supported by Athif's Report. The assertion of negligence by KJ Heer is not substantiated with sufficient evidence and appears to be based on assumption rather than fact.

Sample testing

[262] The court turns its attention to the analysis of sample testing by KJ Heer.

[263] KJ Heer places reliance on the results of Test 2 to assert that none of the fuel storage tanks, including the Starboard Tank, was contaminated. However, this conclusion appears to overlook critical aspects of the evidence. Test 2 results indicate significant water contamination in the Day Tank, which, according to Ronan's statement and Ronan's testimony, aligns with the fuel incident that occurred after seven uplifts from the Starboard Tank. This suggests a possible transfer of contaminated fuel from the Starboard to the Day Tank. The observation of the fuel in the Day Tank as 'milky' supports the presence of emulsification, typically indicative of water in fuel.

[264] Furthermore, the cessation of similar fuel-related incidents after the Day Tank was drained and refilled from the port/centre tanks for the remaining journey to Male further supports the contention that the contamination was specific to the fuel drawn from the Starboard Tank.

[265] Test 3 provides compelling evidence, revealing an exceptionally high sodium content of 10,700 parts per million in the Starboard Tank. Such a concentration is markedly unusual for diesel fuel and strongly suggests contamination, likely from saltwater. The fact that this sample was drawn from the Starboard Tank in Male prior to defueling adds to its relevance and significance.

[266] The court notes with concern that KJ Heer seems to have disregarded the Test 3 results. His failure to acknowledge or provide a plausible explanation for this high sodium content weakens his argument and raises questions about the comprehensiveness of his analysis.

[267] In conclusion, the court finds that the evidence, particularly the results of Test 3, significantly undermines KJ Heer's contention that the Starboard Tank was not contaminated. The high sodium content in the Starboard Tank, alongside the corroborative evidence of water contamination in the Day Tank following uplifts from the Starboard Tank, points to a probable contamination of the fuel in the Starboard Tank. This, coupled with the cessation of issues after switching to fuel from other tanks, leads the court to conclude that the fuel in the Starboard Tank was indeed contaminated. The plaintiffs' claim is thus supported by the evidence presented, and the court finds in their favour on this issue.

Source of water

[268] The court next examines KJ Heer's analysis regarding the origin of water contamination in the diesel fuel of the vessel. The argument presented by KJ Heer suggests that water could have entered the fuel system at any point between the storage tanks and the engine and generator. However, the evidence and testimony examined raise substantial doubts regarding this hypothesis.

[269] Firstly, KJ Heer's statement that water could have entered the fuel system is not founded on concrete evidence but is rather a speculative assertion. He concedes that this is merely a possibility without providing a substantive basis for his claim. Crucially, during cross-examination, KJ Heer admits to not having inspected the vessel, nor did he find any defects or damage that could lead to such a conclusion. This lack of direct investigation into the vessel's condition significantly undermines the credibility of his hypothesis.

[270] Further, KJ Heer acknowledges the robust and sturdy nature of the vessel, a Trintella A. His admission that the boat, despite being old and in need of maintenance, did not exhibit any current defects or damage that he could report, weakens the argument of a leak or water ingress through the hull or components of the vessel.

[271] Surveyor Domnic conducted an inspection focusing on the integrity of the vessel's hull and any potential defects or damage that might have allowed water ingress. His findings revealed no such issues, further supporting the contention that the vessel was structurally sound and unlikely to have allowed water ingress through leaks.

[272] KJ Heer's suggestion that water could have entered the fuel system via a water-cooled heat exchanger is also refuted. Ronan clarifies, with KJ Heer's concurrence, that the vessel is not equipped with a fuel cooler, negating this proposed route of water ingress.

[273] In conclusion, the court finds that KJ Heer has failed to provide a plausible explanation for the source of water contamination in the diesel fuel. His suggestions lack evidentiary support and do not align with the factual circumstances as established through testimonies and inspections. The absence of any demonstrated defects, damages, or structural weaknesses in the vessel further diminishes the likelihood of his proposed water ingress pathways. Therefore, the court does not find KJ Heer's hypothesis concerning the source of the water contamination to be persuasive.

Assessment of Ronan's credibility

[274] A point of concern raised by the defendant is the credibility of Ronan as a witness given that he is a party in this suit.

[275] In addressing the credibility of Ronan's evidence, it is essential to consider the manner and context in which his actions and communications were conducted, especially in light of the defendant's efforts to portray him as biased. The sequence of events and actions taken by Ronan, as Master of the vessel, demonstrate a consistent and rational approach to identifying and resolving the issue of the alleged contaminated fuel supplied by the RLYC Marina.

[276] The court observes Ronan's immediate initiative upon suspecting contamination — seeking a joint survey of the vessel in Male on 19 July 2018 and subsequent steps to investigate and resolve the issue. This underscores his genuine concern and objective approach. His actions, ranging from the request for a joint survey to the sampling of fuel, communication with the RLYC for clarification on potential contamination, and the pursuit of amicable settlement, reflect a proactive and transparent effort to address the problem. These steps are consistent with the expectations of a responsible and experienced master, keen on resolving a critical issue affecting the vessel.

[277] The lack of response from the defendant, particularly its refusal to participate in a joint survey and the failure to provide essential information such as fuel batch certificates and sales records until compelled by court order, contrasts sharply with Ronan's earnest attempts. This disparity in responsiveness is telling. The defendant's disinterest in investigating a serious complaint of fuel contamination, despite having reasonable means to do so, points to a lack of diligence and raises questions about their commitment to resolving the issue.

[278] Furthermore, Ronan's qualifications and experience, both as a sailor and an expert in bulk fuel installations, lend significant weight to his testimony. His direct involvement in the events, coupled with his technical background, provides a credible foundation for his assertions. This is in stark contrast to KJ Heer, the defendant's expert, whose approach and conclusions appear to stray from the fundamental purpose of his engagement — to ascertain whether the fuel supplied at the RLYC Marina was contaminated. KJ Heer's hypothesis regarding the Starboard Tank and his failure to focus on the integrity of the RLYC fuel installation reflect a deviation from his expected role as an independent expert.

[279] In conclusion, the evidence presented by Ronan, supported by his actions, expertise, and the corroborating documentary evidence, establishes a credible and coherent account of the events and issues at hand. His efforts to resolve the matter amicably and his clear, consistent communication with the defendant contrast with the defendant's lack of appropriate response and KJ Heer's unconvincing expert testimony.

Whether the plaintiffs have satisfied its burden of proof on a balance of probablities

[280] The legal framework for assessing causation and remoteness of damage in both contract and tort is indeed pivotal in this case. Section 101 of the Evidence Act 1950 clearly mandates that the plaintiffs bear the burden of proof on a balance of probabilities to establish all elements of the breach of contract and tort. This provision stipulates that whoever asserts the existence of facts in court must prove those facts exist, placing the onus of proof on the party making the assertion.

[281] The standard of proof in civil proceedings, as highlighted in *Miller v Minister of Pensions* [1947] 2 All ER 372 a decision of the English High Court, is distinct from that in criminal cases. It does not require absolute certainty but rather that it is more probable than not that the alleged event occurred. If the evidence tilts the balance one way or the other, the tribunal must decide accordingly. However, if the probabilities are equal, the burden is not discharged.

[282] *In re H and others (minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 (HL) further clarifies that there is only one civil standard of proof, which is the balance of probability. This means that the court must be satisfied that an event's occurrence was more likely than not, based on the evidence presented. This principle also acknowledges that the inherent improbability of an event is a factor in weighing the probabilities. Therefore, the more serious or less likely an allegation, the stronger the evidence required to establish it on the balance of probabilities.

[283] In *Dato' Pardip Kumar Kukreja & Anor v Vell Paari a/l Samy Vellu* [2016] 4 MLJ 649 (CA), the court elucidated that the burden of proof is twofold: establishing a case and introducing evidence. The party bearing this burden must do so throughout the trial, satisfying the balance of probabilities standard. Once this party discharges their burden, the evidential burden shifts to the other party. However, if the original burden is not met, the opposing party is not obligated to adduce any evidence.

[284] Therefore, in the present case, it is incumbent upon the plaintiffs not only to respond to the defendant's defences but also to actively prove their case.

A They must demonstrate, on the balance of probabilities, that the damage to the vessel was a direct result of the defendant's failure to supply good quality fuel.

[285] In this case, although there is sufficient evidence that on a balance of probabilities that the vessel had experienced no earlier issues before refuelling at the RLYC, the fuel in the storage tanks of the vessel before the refuelling at the RLYC was clean, the vessel only encountered problems with her engine after the fuel uplift from the RLYC Marina, the vessel was in good condition and seaworthy which removes the possibility of seawater ingressing into the vessel tanks, the vessel did not take any seawater during the voyage and the vessel sustained the engine and electrical damage caused by contaminated fuel, there is no direct evidence for the cause of the fuel contamination: How did the saltwater get into the fuel? The issue at hand is whether the court can determine that the damage to the vessel was proximately caused by contaminated fuel supplied by the defendant, despite the absence of direct evidence pinpointing the cause of the fuel contamination.

[286] In dealing with this issue, I turn to the cases of *Vinmar International Ltd and another v Theresa Navigation SA* [2001] 2 All ER (Comm) 243, a decision of the Commercial Court of the Queen's Bench Division, *Galoo Ltd (in liq) and others v Bright Grahame Murray (a firm) and another* [1995] 1 All ER 16 (English Court of Appeal) and *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 (Singapore Court of Appeal) for guidance. These cases emphasise that establishing causation does not require absolute certainty; rather, it requires a determination of what is more likely than not, based on the evidence presented and the application of common sense.

[287] In *Vinmar International Ltd*, the case concerned Vinmar International's claim against Theresa Navigation for damages due to the contamination of ethylene, caused by the defendant's vessel being unfit for carriage, exacerbated by *Vinmar*'s decision to continue loading despite knowledge of the contamination. The issue was the contamination of a cargo of ethylene by butadiene on the defendant shipowners' vessel. The defendants admitted their vessel was unfit for carrying ethylene due to failure in purging the previous cargo of butadiene, leading to contamination. However, they argued that the decision by the cargo's owners to continue loading the cargo, despite knowing the vessel's unsuitability, severed the causal link between their breach and the loss suffered. The court, in this case, was required to decide whether this decision to continue loading was a sufficiently reasonable action to break the chain of causation between the breach and the full cargo's contamination.

[288] The approach taken by the court in *Vinmar*, relying on *Galoo Ltd*, a case relating to claims of negligence against auditors for inaccuracies in financial

audits leading to substantial financial losses and misguided investments, highlights that causation is a matter of fact and common sense. In *Galoo*, it was stated:

> The passage which I have cited ... make it clear that if a breach of contract by a defendant is to be held to entitle the plaintiff to claim damages, it must first be held to have to have been and 'effective' or 'dominant' cause of his loss.
>
> ...
>
> How does the Court decide whether the breach of duty was the cause of the loss or merely the occasion for the loss?
>
> The answer in my judgment is supplied by the Australian decisions to which I have referred, which I hold to represent the law of England as well as Australia, in relation to a breach fo duty imposed on a defendant whether by contract or in tort in a situation analogous to breach of contract. The answer in the end is 'By the application of the Court's common sense'.

[289] The court in *Vinmar* examined the context of the alleged breach or intervening act to determine whether it should be regarded as the effective or dominant cause of the loss. This involves a careful analysis of the circumstances surrounding the breach and the subsequent events. The emphasis is not on the presence of direct evidence but on the logical and reasonable inferences that can be drawn from the facts at hand.

[290] In applying these principles to cases without direct evidence of causation, the court relied on constructing a narrative that logically follows from the known facts. This includes examining the sequence of events, the nature of the actions taken by the parties involved, and the reasonable expectations and practices in the specific context. The court also considered the inherent probability or improbability of an event as a factor in weighing the probabilities.

[291] Ultimately, the court's decision on the effective cause of loss was grounded in a reasoned analysis of all available evidence, using common sense to fill in gaps where direct evidence is lacking. This approach allows for a comprehensive and fair assessment of causation, even in complex situations where direct evidence may not be readily available.

[292] In the case of *Gimpex*, the court adeptly demonstrated the process of determining the effective cause of loss in the absence of direct evidence, relying primarily on the application of common sense and the careful evaluation of circumstantial evidence and the inferences drawn from it.

[293] The case centres on Gimpex's allegations of breach of contract and conspiracy for delivering inferior quality coal, leading to a legal dispute over the

authenticity of quality inspection reports and a consideration of corporate liability and fraud claims. A key issue revolved around the defendant's refusal to conduct a joint inspection of the coal cargo upon arrival in Karachi. This refusal was significant because Gimpex, the plaintiff, proposed the inspection as a means to verify the quality of the coal, which they alleged was substandard due to the defendant's fraudulent actions. the defendants, by refusing this inspection, raised questions about their motivations and the actual quality of the coal, as such inspections are standard practice in resolving disputes over cargo quality.

[294] The court's method in this scenario involved a detailed examination of the defendants' actions and their responses to the proposal for a joint inspection. the defendants offered several reasons for their refusal, including reliance on a previous report which they claimed was final and binding, and concerns regarding the fairness of the inspection due to the coal's pilferage and perceived threats to their representative. These explanations were critically assessed by the court, which weighed their credibility and reasonableness.

[295] Furthermore, the court paid close attention to the manner in which these explanations were presented over time. The defendants' initial response was to dismiss the joint inspection as pointless, a stance that was later supplemented by the additional explanations. This evolution in their response played a key role in the court's assessment, as the initial dismissal and the later, more detailed justifications were weighed against each other. the defendants' failure to provide these reasons in their initial response to the joint inspection proposal diminished the credibility of their later arguments.

[296] In its deliberations, the court considered whether it was reasonable to infer that the defendants' refusal to inspect was indicative of their knowledge that the coal was of inferior quality. This inference was drawn by examining the defendants' actions within the broader context of standard industry practices and the specific circumstances of the case. Although the court recognised some legitimacy in the defendants' concerns, it also noted the impact of their initial dismissal and the evolution of their explanations on the overall credibility of their position.

[297] The approach taken by the court in *Gimpex* highlights how inferences, drawn from the analysis of actions, responses, and the credibility of explanations provided by parties, can be crucial in determining the effective cause of loss in cases where direct evidence is not available.

[298] Applying the principles derived from the cases of *Vinmar International Ltd*, *Galoo Ltd* and *Gimpex* to the facts of this case, this court starts its analysis

by examining the historical events leading up to the incident and the condition of the vessel.

[299] The vessel's condition prior to the incident is a foundational element in this analysis. After undergoing extensive maintenance at Northern Shipyard, Langkawi, for about seven months until June 2018, the vessel was in a state of confirmed seaworthiness. This maintenance included cleaning of all four fuel tanks and replacement of all fuel system filters. Sea trials on 21 May 2018 and 22 May 2018 revealed no pre-existing fuel contamination issues. This effectively sets a baseline, indicating that the vessel was in good condition before refueling at the RLYC on 4 July 2018, where she uplifted 1,615.85 litres of diesel fuel.

[300] The critical issue arises when the vessel began using fuel from the Starboard Tank, primarily filled at the RLYC, on 12 July 2018. Following this, there were immediate engine troubles, characterised by smoking and overspeed, which resulted in significant damage. The temporal proximity of these issues to the refueling at the RLYC, combined with the absence of any such problems prior to this event, strongly points towards the RLYC fuel being the source of contamination.

[301] Supporting this inference is the analysis of the fuel samples from the vessel's Starboard Tank, which showed high water and sodium content, indicative of seawater contamination. This scientific evidence aligns with the timing of the vessel's engine malfunction, further implicating the fuel supplied by the RLYC.

[302] In the vein of *Gimpex*, the court also evaluates the defendant's response to the incident. The failure of the defendant to conduct joint inspections or sample testing, despite being standard industry practice in fuel contamination cases, is particularly telling. This inaction in the face of a major safety incident not only questions the defendant's conduct but also aligns with *Gimpex*'s emphasis on the importance of evaluating actions and responses in determining causation.

[303] Moreover, no alternative explanation for the contamination has been credibly presented. The plaintiffs' assertion that the incident would not have occurred 'but for' the fuel uplifted at the RLYC stands strong in the absence of a plausible alternative source of contamination.

[304] Operational issues at the RLYC further compound the defendant's challenges. The lack of a proper fuel selling license and absence of maintenance records for the fuel installation system during the relevant period raise questions about the integrity and reliability of their operations.

[305] In conclusion, after a careful and thorough analysis of all the evidence presented, and applying the *Vinmar*, *Galoo* and *Gimpex* approach of logical and common-sense inference to the facts of the case, the court finds that it is more probable than not that the contaminated fuel, which caused significant damage to the vessel, was supplied by the defendant at the RLYC. This finding is based on the sequence of events, the condition and maintenance history of the vessel, the analysis of the contaminated fuel, the defendant's response to the incident, the lack of any alternative explanation for the contamination, and concerns regarding the defendant's operational practices. The plaintiffs have, therefore, successfully discharged their burden of proof on a balance of probabilities.

Whether the plaintiffs acted reasonably to mitigate their losses and damages

[306] On the issue of mitigation, the court finds that the plaintiffs have demonstrated a diligent and appropriate response to the suspected fuel contamination, effectively balancing immediate action with practical limitations, thus fulfilling their duty to mitigate losses under challenging circumstances.

[307] The evidence presented by the plaintiffs, specifically Ronan and crew member Gunther, demonstrates a clear and immediate response to the suspected contamination of the fuel supplied to their vessel. The steps taken by the crew upon suspicion of contaminated fuel are indicative of a prudent and measured approach to mitigate the potential damage to the vessel and safeguard the safety of her crew.

[308] The crew's decision to drain the fuel from the Day Tank, which was drawn from the Starboard Tank, and their subsequent use of fuel from the port and centre tanks for the remainder of their journey to Male, was a rational and necessary response to a critical situation. Their actions demonstrate an awareness of the potential risks and a commitment to mitigating further damage to the vessel. Moreover, the conservative motoring speed adopted by the crew further illustrates their conscientious effort to minimise any additional harm that could be caused by the suspected contaminated fuel.

[309] The necessity of these actions is underscored by the circumstances the vessel found itself in — stranded mid-ocean, reliant on wind conditions for navigation, and facing the imperative of reaching Male as quickly and safely as possible. The crew's actions were not only appropriate but essential under the circumstances.

[310] Furthermore, the complete defueling of the Starboard Tank in Male, coupled with the necessary repairs to the injection pump, injectors, and engine oil replacement, evidences a thorough and proactive approach to addressing

the contamination issue. The absence of any further damage reported during the vessel's passage from Male to Cochin to Langkawi, following these remedial actions, corroborates the effectiveness of the measures taken by the plaintiffs.

[311] Regarding the plaintiffs' decision not to charter a similar yacht while their vessel was docked in Boustead Langkawi Shipyard, Ronan's explanation that such an action would have been prohibitively expensive is a reasonable justification. Opting for an alternative holiday instead represents a sensible and cost-effective approach to mitigating losses, particularly in the context of the unforeseen and substantial expenses already incurred due to the fuel contamination.

[312] In conclusion, the plaintiffs have demonstrated a diligent and responsible approach to mitigating the losses and damages caused by the suspected contaminated fuel. Their actions were appropriately tailored to the urgent and challenging situation they faced, balancing the need for immediate action with the practical limitations of their circumstances. Therefore, the court finds that the plaintiffs fulfilled their duty to mitigate their losses effectively and reasonably under the given circumstances.

Liability

[313] The central question for determination by this court is whether, based on the evidence presented, the defendant can be held liable for either breaching a contract or committing negligence. This involves considering whether the defendant breached an implied duty of care and/or s 16 of the Sale of Goods Act 1957 ('the SOGA') by supplying contaminated diesel fuel, leading to damage to the plaintiffs' vessel. The court will examine the conditions under s 16 of the SOGA, particularly the requirements regarding the fitness of goods for a specific purpose and the reliance on the seller's skill and judgment. Additionally, the court will assess the principles of negligence, as established in relevant legal precedents, to determine whether the defendant owed a duty of care in supplying good quality fuel and whether there was a breach of this duty that caused damage to the vessel.

Breach of implied duty of care and/or s 16 of the Sale of Goods Act 1957

[314] The plaintiffs contend that the defendant supplied diesel fuel that was contaminated, leading to significant damage to their vessel and this contamination was a direct result of the fuel supplied by the defendant at the RLYC Marina. The plaintiffs submit that the defendant has breached an implied duty of care and/or s 16 of the SOGA by providing fuel that was not reasonably fit for the purpose for which it was required, nor of merchantable quality.

[315] Section 16 of the SOGA implies a condition that goods sold should be reasonably fit for the particular purpose for which they are purchased, provided the buyer makes known to the seller the specific purpose for which the goods are required, and relies on the seller's skill and judgment. Section 16 provides:

> (1) Subject to this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:
>
> (a) Where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be reasonably fit for such purpose:
>
> Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.

[316] In *Union Alloy (M) Sdn Bhd v Sykt Pembenaan Yeoh Tiong Lay Sdn Bhd* [1993] 3 MLJ 167 (HC), the court articulated four preconditions for s 16(1)(a) of the Sale of Goods Act: the buyer must make known the specific purpose for the goods, demonstrate reliance on the seller's skill and judgment, the goods must be within the seller's normal business scope, and if specific, the goods must not be sold under a patent or trade name. It was observed:

> ... there are four preconditions laid down in s 16(1)(a). These preconditions are:
>
> (a) the buyer must make known to the seller the particular purpose for which the goods are required;
>
> (b) it must shown that there was reliance by the buyer on the seller's skill and judgment, and the buyer must in fact rely on the seller to supply suitable goods;
>
> (c) the goods must be of a description which it is in the course of the seller's business to supply; and
>
> (d) if the goods are specific, they must not be sold under their patent or trade name.

[317] Applying these principles to the current case, the plaintiffs have satisfactorily established the preconditions for the application of s 16 of the SOGA. Firstly, as operators of the RLYC Marina, the defendant was undoubtedly aware of the specific purpose for which the fuel was required, namely for refuelling the vessel for her intended voyage. This specific purpose was made known to the defendant when the purchase was made. Secondly, there was a clear reliance by the plaintiffs on the defendant's skill and judgment in supplying quality fuel suitable for the vessel, given the defendant's business

of supplying fuel to boaters at an award-winning marina. Thirdly, the defendant is in the regular business of supplying fuel, which aligns with the third precondition.

[318] The evidence presented unequivocally demonstrates that the fuel supplied by the defendant was contaminated, leading to significant damage to the vessel. This contamination and the resultant damage affirm the defendant's breach of the implied terms under s 16 of the SOGA to supply fuel that was of good quality and fit for the intended purpose.

[319] Moreover, the defendant's failure to provide essential maintenance records, to carry out necessary tests, and to call pertinent witnesses or offer a reasonable explanation for these omissions further corroborates the plaintiffs' claim. In accordance with s 114(g) of the Evidence Act 1950, this court is inclined to draw an adverse inference against the defendant for these failures. It is reasonable to infer that, had these documents and witnesses been produced and called, they would have evidenced that the RLYC bulk fuel installation was not maintained to the required standards.

[320] In light of the aforementioned, it is the finding of this court that the defendant has breached the implied duty and the provisions under s 16 of the SOGA. The fuel supplied by the defendant was not reasonably fit for the purpose for which it was purchased and was not of merchantable quality, resulting in substantial damage to the vessel.

Breach of duty of care to supply good quality fuel

[321] The court also considers the question of whether the defendant breached its duty of care in supplying good quality fuel, resulting in damage to the plaintiffs' vessel.

[322] The principles of negligence, as articulated in *Arab-Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors and other appeals* [2003] 1 MLJ 567 (CA), *Caparo Industries plc v Dickman and others* [1990] 2 AC 605, (HL) and *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* [2006] 2 MLJ 389 (FC) are relevant to this determination.

[323] In *Arab Malaysian Finance Bhd*, the appellants appealed against a High Court decision finding them liable for negligence and nuisance following the collapse of a tower block in Taman Hillview, Highland Towers, which rendered adjacent blocks worthless due to concerns of safety and stability. The Court of Appeal stated that the plaintiff must demonstrate a duty of care owed by the defendant, a breach of that duty, causation linking the breach to the harm, and damage suffered by the plaintiff that is not too remote.

[324] In *Caparo*, a public limited company sued its directors for fraudulent misrepresentation and its auditors for negligence in auditing and reporting, alleging reliance on inaccurate accounts for share purchases and a company takeover. It was explained that for a duty of care to exist, there must be foreseeability of damage, a legally recognised relationship of 'proximity' or 'neighbourhood' between the parties, and a context in which it is fair, just, and reasonable for the law to impose such a duty.

[325] *The Majlis Perbandaran Ampang Jaya* ('MPAJ') case also relates to the Highland Towers collapse. The respondents sued the local authority MPAJ for negligence and nuisance following a landslide and the subsequent collapse of one apartment block, with the courts examining MPAJ's pre-and post-collapse liabilities, leading to appeals regarding the extent of these liabilities and the nature of the respondents' legal claims. The Federal Court applied the general duty of care test from *Caparo* to all negligence claims, including those for pure economic loss, focusing on three key aspects: the foreseeability of the damage, the proximity between plaintiff and defendant, and the fairness and reasonableness of imposing a duty of care.

[326] Applying these principles to the current facts, it is evident that the defendant owed a duty of care to the plaintiffs. As a supplier of diesel fuel to yachts, including the plaintiffs' vessel, it is reasonably foreseeable that supplying contaminated fuel could result in damage to the vessel. This aligns with the first element of the *Caparo* test — foreseeability of damage.

[327] Regarding proximity, the relationship between the defendant, as the operator of the RLYC Marina fuel pump, and the plaintiffs, as users of the bunkering services, establishes a close and direct connection. This satisfies the second element of the *Caparo* test. Furthermore, considering the nature of the relationship and the reliance placed by the plaintiffs on the defendant to supply good quality fuel, it is both fair and reasonable to impose a duty of care on the defendant for the benefit of the plaintiffs.

[328] The evidence presented, clearly indicates that the vessel sustained damage subsequent to refuelling at the RLYC Marina. The contamination of the fuel onboard the vessel, which has been identified as the causative factor for the damage, and the absence of any other probable cause for such damage, point towards a breach of the duty of care by the defendant. The defendant's contentions against the source of the contamination are not supported by the evidence, which overwhelmingly suggests that the contaminated fuel originated from the RLYC Marina fuel pump.

[329] Given these findings, it is the finding of this court that the defendant has breached its duty of care to supply good quality fuel to the plaintiffs. The

defendant's actions, or lack thereof, have directly caused the damage to the vessel, leading to their subsequent loss and damages.

Whether the plaintiffs suffered the loss and damages claimed

[330] The plaintiffs seek compensation for a series of losses stemming from the supply of contaminated fuel to the vessel. This claim encompasses a spectrum of damages, categorised under three primary heads: direct and consequential loss arising from the contaminated fuel, loss of use of the vessel, and damages pertaining to non-pecuniary losses such as mental distress and disruption of plans. The plaintiffs laid out their case by detailing the specific financial and emotional tolls incurred which range from the initial costs of the contaminated fuel, subsequent cleaning and disposal expenses, to extensive repair and storage costs. Additionally, they claim for costs for fuel testing, additional crew wages, and flight expenses necessitated by the emergency resulting from the contaminated fuel. Further, the plaintiffs claim expenses related to alternate accommodation, replacement holidays, and medical treatment due to the severe stress and trauma suffered. The loss of use of the vessel is also a component of the claim. The plaintiffs also claim for the assault on feelings, mental distress, and disruption to their lives. The detailed documentation provided in support of these claims, comprising testimonies and extensive documentary evidence, forms the foundation of the plaintiffs' case.

[331] In this case, the assessment of damages claimed by the plaintiffs encompasses both contract and tort law principles, applicable to all three heads of damages: direct and consequential loss from contaminated fuel, loss of use of the vessel, and non-pecuniary losses such as mental distress.

[332] Section 74 of the Contracts Act 1950, mirroring the principles set out in *Hadley and Another v Baxendale and Others* (1854) 9 Ex 341 (Court of Exchequer), provides the basis for calculating damages in breach of contract cases. It states that the party suffering from a breach is entitled to compensation for losses which either naturally arose from the breach or were within the contemplation of the parties at the time of contract formation. This includes foreseeable losses directly linked to the breach. Therefore, for the first head of damages — direct and consequential loss arising from the contaminated fuel — this principle is directly applicable. It encompasses the cost of the contaminated fuel, cleaning, disposal, repair costs, and other expenses directly resulting from the breach.

[333] However, the application of tort law principles broadens the scope of recoverable damages. According to Lord Blackburn in *Livingstone v Rawyards Coal Company* (1880) 5 App Cas 25 at p 29 (HL), the purpose of damages in

tort is to place the injured party in the position they would have been in had the wrongful act not occurred. This principle is particularly relevant to the plaintiffs' claims for loss of use of the vessel and non-pecuniary losses. These damages, while not traditionally recoverable in a strict contractual context, are considered under tort law, especially when they result in significant alteration to the plaintiffs' lifestyle and plans.

[334] The principle of remoteness of damages applies both in contract and tort. It limits recovery to losses that were foreseeable at the time the contract was made or at the time of the tortious act. Thus, for each head of claim, the court will evaluate whether the defendant could have foreseen that the supply of contaminated fuel would not only lead to the need for repairs but also result in the loss of use of the vessel and cause significant emotional and psychological distress to the plaintiffs.

[335] The burden of proof, as reinforced by Lord Goddard in *Bonham-Carter v Hyde Park Hotel Ltd* [1948] 64 TLR 177 (English High Court) and subsequent cases such as *Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777 (FC), rests on the plaintiffs. They must substantiate their claim with clear and convincing evidence. This involves a detailed examination of the documentary evidence provided to support the quantum and nature of the damages claimed.

[336] The adjudication of damages in this case will therefore involve a nuanced application of both contract and tort law principles. The court will critically analyse the evidence presented, in light of the established legal frameworks, to ensure that any damages awarded appropriately reflect the nature and extent of the loss suffered by the plaintiffs, and were within the reasonable foresight of the defendant at the relevant time.

Direct and consequential loss arising from the contaminated fuel

[337] Under the head of direct and consequential loss arising from the contaminated fuel, the plaintiffs claim a total of USD193,959.19. These are detailed by the plaintiffs in Appendix C of the plaintiffs' written submissions.

[338] In summary, this figure includes the initial cost of contaminated fuel purchased at the RLYC Marina, amounting to USD1,234.28. Significant expenses were incurred for repairs, storage, and replacement of parts damaged by the contamination, including a replacement injector pump and injectors from PB Asher and Bartech Marine, costing USD3,595 and USD4,678.22 respectively. Additional costs for labour, testing, and air freight of the injector pump totaled USD881.55. The vessel underwent extensive storage, works, and part replacements in Male, Maldives, and Cochin, India, leading to charges of

USD15,922.82 and USD4,017.42 respectively. The generator starter motor replacement cost USD1,943.94, while extensive repairs at Boustead Langkawi Sdn Bhd totaled USD60,262.56. The plaintiffs also had to purchase a new Cummins Onan Genset for USD20,498.88 after the installed generator was wrecked.

[339] Additionally, the anti-foul paint, essential for the vessel's maintenance, cost USD3,520, and moving the new generator into the yacht incurred USD605.50. Reimbursements for batteries purchased by a crew member, Justin Hoye-House, amounted to USD188.87. The plaintiffs received an insurance payout of USD40,305.45, which reduced their net claim for these damages to USD75,862.95. Fuel testing costs done through Intertek UK were also claimed, with Test 1 and Test 3 costing USD625.90 and USD362.00 respectively. Crew wages and expenses for additional crew brought in for emergency repairs, surpassed USD10,000, including payments to various crew members and the cost of their flights.

[340] The plaintiffs also incurred over USD30,000 for alternate accommodation and travel while the vessel was uninhabitable, including various hotel stays across Europe and Malaysia. The total costs for these accommodations are detailed in a series of transactions, demonstrating the prolonged and widespread impact of the incident on the plaintiffs. Furthermore, the plaintiffs had to arrange for a replacement family holiday due to the vessel being unavailable, incurring significant costs at locations like the Conrad Maldives and Casa Elisabeth Villa. Travel costs, including ferry and Eurotunnel charges.

[341] Finally, administrative costs for managing the case, including services rendered by Lisa Powell and invoiced through her company, General Dogsbody Ltd, were also significant, totaling USD5,488.65.

[342] The claims made by the plaintiffs are substantiated through a comprehensive collection of documents and financial records. Firstly, the purchase of contaminated fuel, amounting to USD1,234.28, is evidenced by sales vouchers and visa statements confirming the transaction. Invoices from PB Asher and Bartech Marine support the claims for replacement injector pumps and injectors, totaling USD8,273.22. The testing and air freight costs of USD881.55 are validated by additional commercial invoices from PB Asher. The storage and repair costs in Male, Maldives, and Cochin, India, totaling USD19,940.24, are corroborated by detailed invoices from Maldives Yacht Support and Unicorn Enterprises, along with bank statements showing corresponding payments. The expenditure on a new Cummins Onan Genset generator, amounting to USD20,498.88, is confirmed by invoices from Tripower Corp and bank payment advice.

[343] Moreover, the plaintiffs have bank statements and receipts to confirm payments for crew expenses, including wages, daily funds, and flight costs, which exceed USD10,000. Accommodation costs during the repair period, exceeding USD30,000, are substantiated by receipts from various hotels across Europe and Malaysia, and documentation for alternative accommodation and a replacement family holiday. Administrative services fees of USD5,488.65 charged by Lisa Powell through General Dogsbody Ltd are validated by an invoice. Altogether, these documents form a robust evidentiary base, supporting the plaintiffs' total claimed expenses of USD193,959.19.

Analysis and findings

[344] In assessing the plaintiffs' damages the court has carefully considered the evidence presented by the plaintiffs, particularly the testimonies of Ronan and Lisa Powell, and the supporting documentation they provided. The plaintiffs have meticulously documented their losses, supported by invoices, bank statements, payment receipts, and other relevant documents, all of which are crucial in determining the veracity and extent of the claimed damages.

[345] Lisa Powell, who functioned as Ronan's personal assistant, played a pivotal role in sourcing, ordering, and making payments for the various parts and expenses related to the plaintiffs' claim. Her testimony, as laid out in WS-PW8 was crucial in explaining each item of loss. The accuracy and completeness of her record-keeping, encompassing Ronan's bank account movements, expenses, and all invoices, communications, and supporting documents, lend substantial credibility to the plaintiffs' claim.

[346] Significantly, all costs claimed by the plaintiffs were paid in full, as evidenced by the documentation presented. These costs, as outlined by PW8, were incurred in various currencies but have been consistently converted to USD at the prevailing exchange rate on the respective dates of payment. This methodical approach to accounting, while not challenged or contradicted by any other evidence, provides a reliable basis for assessing the quantum of damages.

[347] On the defendant's challenge to the credibility of the damages claimed by the plaintiffs due to the absence of evidence specifying the source of exchange rates used for currency conversion to USD, the court finds that the plaintiffs have sufficiently addressed this challenge.

[348] The core of the defendant's argument lies in questioning the authenticity of the amount of damages claimed, highlighting that Lisa Powell failed to provide explicit evidence of the source of the exchange rates used for converting various expenses, incurred in diverse currencies such as Euros,

MYR, Indian Rupees, and GBP, into USD. Lisa Powell, in her testimony, stated under oath that she converted these expenses to USD for the sake of consistency, using the exchange rates applicable on the dates the payments were made, which she sourced online. However, the precise source of these rates was not detailed.

[349] It is pertinent to note that Lisa Powell's testimony was given under oath and remained unchallenged and uncontradicted by any other witness. This lends credence to her statement. In the absence of any contradictory evidence, and given that her method of conversion was uniform and based on the exchange rates on the specific dates of the payments, it is reasonable to rely on her testimony as a valid basis for the calculation of the total claim in USD.

[350] Moreover, the defendant has not presented any evidence to dispute the accuracy of the exchange rates used by Lisa Powell or to suggest any flaw in her method of conversion. The burden of proof in legal proceedings not only lies on the party making a claim but also requires the opposing party to present evidence if they dispute that claim. In this instance, the defendant's objection to the plaintiffs' method of currency conversion lacks substantiation in the form of counter-evidence or expert testimony.

[351] Therefore, based on the evidence before the court and the principles governing the burden of proof, the method employed by Lisa Powell for converting the various expenses into USD appears to be appropriate. The amounts claimed by the plaintiffs as damages, thus, are credible. In the absence of concrete evidence from the defendant countering this approach, the method adopted by the plaintiffs for calculating their total claim in USD is to be accepted.

[352] On whether the plaintiffs are entitled to recover for the losses sustained due to the fuel contamination incident that rendered vessel inoperative and necessitated alternative accommodation and travel, the court finds that the plaintiffs are entitled to compensation for both the direct losses due to the damage to their yacht and the additional costs for alternate accommodation and travel. The claims are substantiated, reasonable, and proportionate to the losses suffered.

[353] The plaintiffs claimed for the costs incurred for alternative accommodation and travel, along with replacement holidays, consequent to the vessel becoming uninhabitable. They submitted that all direct losses stemming from the incident are claimable, a position that aligns with established legal precedent regarding compensation for losses directly attributable to a breach of duty or wrongful act.

[354] The defendant contests the claim for alternative accommodation, pointing out that Ronan possesses homes in both the UK and New Zealand. However, this objection seems untenable in the context of the losses claimed. Lisa Powell, managing the affairs of Ronan, elucidated that Ronan's available residences during the material time were in New Zealand and on the vessel itself. The New Zealand property was under construction, and residency there was further restricted due to immigration regulations. Thus, the vessel was not merely a luxury but a necessity for Ronan, underpinning the legitimacy of the claim for alternative accommodation and travel expenses.

[355] The crux of this issue lies in the foreseeability of the loss. The operator of the RLYC Marina, responsible for the servicing of the vessel, could have reasonably foreseen that damage to a yacht might result in her owners requiring alternative accommodation. The specific plans of the plaintiffs, including the circumnavigation envisaged for most of 2018, are not central to this matter. The pivotal question is whether the plaintiffs were deprived of the use of the vessel, a consequence that was foreseeable by the defendant.

[356] In assessing the quantum of damages, the evidence presented by Lisa Powell is particularly instructive. Her analysis, encapsulated in the 'Yacht Hire Comparison Sheet,' demonstrates that the weekly charter rate for a vessel comparable the plaintiff's vessel would range between USD18,900 and USD29,600, with an average of USD23,894.00 per week. Considering that the vessel was non-operational for approximately 63 weeks from 20 July 2018 to 4 October 2019, the cost of chartering a substitute vessel would approximate USD1,505,322.00. In contrast, the actual expenditure by the plaintiffs on alternative accommodation and travel during this period was USD56,702.72, substantially lower than the hypothetical charter cost. This disparity underscores the plaintiffs' efforts to mitigate their losses.

[357] On the defendant's assertion regarding the ambiguity of the insurance payout and its failure to particularise the items of costs covered under the vessel's insurance, it is necessary to examine the evidence and submissions provided by both parties in a judicious manner.

[358] The defendant argues that an insurance payment of USD40,305.45 by Charles Taylor Marine made to the plaintiffs is unspecified and does not clearly indicate which items of loss are covered. This argument focuses on the plaintiffs' claim for repairs, storage, marine supplies and services, replacement of parts, and accessories for the engines and equipment damaged, with a total claim of USD116,168.40 being reduced by the insurance payout, bringing the claim down to USD75,862.95. the defendant points out that there is no breakdown of the items comprised in the said insurance payout, thus leaving it unclear which items of claim have been covered by the insurance of the vessel.

[359] However, upon a closer analysis of the evidence, this contention does not sufficiently discredit the plaintiffs' claim. Ronan clarified that he made a claim under the vessel's H&M insurance for repairs to the vessel and was reimbursed the sum of USD40,305.45. This is substantiated by the Charles Taylor form of discharge, which confirms this payment as a 'full and final settlement of all claims whether evident now or hereafter that may manifest arising directly or indirectly from the above incident'. The incident in question, as described in the reference of the letter, is the 'Contaminated Bunkers and Subsequent Machinery Damage, 4/7/17 Langkawi', directly linking the insurance payout to the damages sustained due to the contaminated fuel incident, which forms the crux of the plaintiffs' claim in this action.

[360] Furthermore, Ronan confirmed that this sum was to be deducted from the total loss suffered. Lisa Powell detailed that the total sum incurred for repairs, storage, marine supplies and services, replacement of parts, and accessories due to the vessel damage was USD116,168.40, and that the insurance payout for damages sustained to the vessel was USD40,305.45. This amount was duly deducted from the total cost of repairs, resulting in a balance of USD75,862.95. It was also clarified that the insurance payout was not used to offset any other items of claims such as fuel test costs, wages, flight costs, medical costs, and alternative accommodation and transport costs.

[361] In light of the evidence presented, it is clear that the insurance payout of USD40,305.45 was specifically related to the damages sustained to the vessel due to the contaminated fuel incident. The plaintiffs have provided a coherent and detailed account of how this sum was applied to the total claim, thereby addressing the defendant's concerns regarding the specificity of the insurance coverage. Consequently, the plaintiffs' method of accounting for the insurance payout in their total claim is found to be transparent, logical, and in accordance with the principles of compensatory damages as established in relevant case law.

[362] Further, the principles established in the case of *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 (CA) are indeed pivotal to the adjudication of the present matter. The *Aik Ming* principle underscores the imperative that a party's case must be comprehensively presented to the opponent's witnesses during cross-examination. A failure to do so can be construed as an abandonment of the pleaded case. This principle asserts that if a party, without valid reasons, refrains from challenging an aspect of the opponent's case during cross-examination, he may be barred from raising it subsequently in argument.

[363] In the context of the current case, this principle has significant implications:

(a) unchallenged evidence: several portions of the plaintiffs' claim,

particularly those pertaining to the various expenses incurred due to the contaminated fuel, were not expressly challenged by the defendant during the cross-examination of Ronan and Lisa Powell. According to the principle stated in *Aik Ming*, this lack of challenge or contradiction during the trial can be interpreted as an implicit acceptance of these claims by the defendant;

(b) application to the present case: the defendant did not challenge the plaintiffs' assertions regarding the conversion of various expenses into USD, the specifics of the insurance payout, and several individual items of expense, including those related to the repair and maintenance of the vessel, medical fees, and the costs of alternative accommodation and travel. Consequently, in line with the *Aik Ming* principle, these unchallenged aspects of the plaintiffs' claims are deemed to have been accepted by the defendant; and

(c) implications for judgment: given the application of the *Aik Ming* principle, the court is inclined to accept the plaintiffs' claims in these unchallenged areas as valid and to include them in the computation of damages. This approach is consistent with the principle's emphasis on the necessity of thorough cross-examination and the consequences of failing to challenge crucial aspects of an opponent's case.

[364] Therefore, in light of the above considerations and applying the principle from *Aik Ming*, the court finds additional support for awarding the damages as claimed by the plaintiffs. the defendant's failure to adequately challenge these claims during cross-examination signifies an acceptance of the plaintiffs' assertions, thereby reinforcing the plaintiffs' entitlement to the claimed damages.

[365] The defendant raises several specific challenges regarding the expenses claimed by the plaintiffs in relation to the direct and consequential loss arising from the contaminated fuel. These challenges pertain to discrepancies in payments of various invoices from Intertek UK, PB Asher, Bartech, and others, questioned ownership of visa statements, the personal nature of expenses initially paid by companies, and the necessity of alternative accommodation and travel expenses. The court addresses these challenges below:

(a) the plaintiffs claim compensation for the cost of contaminated fuel purchased at the RLYC Marina, totaling USD1,234.28, substantiated by a cash sales voucher and an invoice dated 4 July 2018, and a visa statement confirming payment for 1,615 litres of fuel costing RM4,944.50. The defendant questioned the ownership of the visa statement due to the absence of the first page. However, Lisa Powell confirmed that this was indeed Ronan's statement, corroborated by entries on 18 July 2018 and 19 July 2018, which align with the vessel's

arrival at Male on 17 July 2018. The court accepts this clarification as it aligns with the uncontested arrival date of the vessel at Male;

(b) the plaintiffs claim USD625.90 for the cost of testing and analysing a fuel sample from their vessel, sent to Intertek UK on 30 July 2018, with an invoice dated 2 August 2018 for GBP511.20, and payment confirmed by a bank statement entry on 31 August 2018. The defendant contested that this invoice was addressed and paid by Kemble Airfield Estates, not Ronan personally. Lisa Powell clarified that all expenses, though initially paid by the company, were personal expenses of Ronan, either reimbursed or accounted for as additional company drawings. This clarification is accepted, noting the personal nature of the expense;

(c) the plaintiffs claim USD3,595 for the replacement of an injector pump, destroyed by salt water in contaminated fuel, purchased from PB Asher, with invoice dated 3 August 2018 for GBP2,980 and payment confirmed by bank statement and email on 2 August 2018 and 3 August 2018 respectively. Similar to the Intertek UK invoice, the defendant disputed the personal nature of this expense. However, Lisa Powell's clarification follows the same rationale as above, and the court accepts this explanation. Moreover, the invoice's address to Ronan's personal residence in New Zealand further substantiates the personal nature of this expense;

(d) the plaintiffs claim USD4,678.22 for the replacement of injectors and spares, damaged by contaminated fuel, purchased from Bartech Marine, with an invoice dated 9 August 2018 for GBP3,820.90 and payment confirmed by a bank statement entry on 2 August 2018. The defendant's contention here mirrors that of the previous invoices. Lisa Powell's consistent clarification, coupled with the invoice being issued to Ronan personally, leads the court to accept these expenses as personal to Ronan;

(e) the plaintiffs claim USD881.55 for labour charges for testing and air freight of a replacement injector pump, to ensure correct setup in-field, supported by PB Asher's invoice dated 16 August 2018 for GBP720 and a bank statement entry confirming payment on 17 August 2018. Despite the missing first page of the visa statement, Lisa Powell's operation of Ronan's account and the payments from Kemble Airfield Estates being linked to Ronan's personal account provide sufficient clarity. The court finds these charges to be appropriately substantiated;

(f) the plaintiffs claim USD15,922.82 for storage, works, and parts for the vessel attended to in Male, Maldives, arranged by Maldives Yacht Support due to stringent local regulations, with a statement of accounts dated 17 September 2018 for USD25,241.81 and a bank payment advice confirming remittance on 24 September 2018. Lisa Powell's inability to distinguish which expenses related to the fuel incident is

noted. However, the clarification that Ronan identified relevant expenses for the claim is found satisfactory. It is reasonable that Ronan, being intimately involved with the vessel's operations, could accurately attribute the expenses to the fuel incident;

(g) the plaintiffs claim USD4,017.42 for charges for services and supplies incurred in Cochin, India, for interim repairs, evidenced by Unicorn Enterprises' invoice dated 8 October 2018 for Rs 140,950, a bank statement entry confirming payment on 12 October 2018, and email confirmations of payment. The defendant challenges this on the basis that the invoice was paid by Cotswold Airport Utilities and not Ronan personally. However, the pattern of expenses initially paid by a company but ultimately borne by Ronan personally is consistent. The court accepts Lisa Powell's clarification in line with earlier explanations;

(h) the plaintiffs claim USD1,943.94 for a generator starter motor, initially believed to be the sole issue before the generator was deemed scrap, supported by Hatton Marine & Industrial Rep's invoice dated 10 November 2018 and a bank statement entry confirming payment on 12 October 2018. The defendant's challenge on the non-utilisation of the starter motor is noted. However, Ronan's testimony that the part was initially thought necessary and later deemed unneeded due to the generator being scrap, is a plausible explanation. The court finds this expense to be a reasonable consequence of the situation;

(i) the plaintiffs claim USD20,498.88 for a Cummins Onan Genset to replace the installed generator wrecked by salt water in the fuel, substantiated by invoices from Tripower Corp Pte Ltd dated 22 February 2019 and 11 June 2019, with payment confirmation on 25 March 2019. the defendant challenges the claim for the Cummins Onan Genset, citing potential damage aggravation during a seven-month storage period. The court accepts Ronan's unchallenged testimony that the genset replacement was necessitated by contamination damage, and there is lack of evidence supporting the defendant's speculation on damage aggravation;

(j) the plaintiffs claim USD900.87 for medical treatment in Cochin, India, for PTSD and acute stress experienced by Ronan and his partner due to the casualty, substantiated by several payments to medical facilities in October 2018 as evidenced by bank statements. The defendant questioned the nature of these medical expenses. Ronan's clarification that these expenses were for PTSD treatment following the fuel incident and food poisoning in Cochin is accepted. It is reasonable to infer that the stress and trauma experienced would necessitate such medical intervention;

(k) the plaintiffs claim USD60,262.56 for storage and repair works at Boustead Langkawi Sdn Bhd, including an insurance survey and urgent remedial works, substantiated by quotations, progress bills, official receipts, and bank statement entries confirming various payments made between November 2018 and October 2019. The defendant's inability to differentiate between repairs related to the incident and unrelated repairs is addressed by Ronan's testimony. Given that the vessel had recently undergone a full survey and dry dock, it is logical to conclude that subsequent repair works were predominantly due to the fuel contamination. The absence of cross-examination on this point further tilts the balance in favour of the plaintiffs' claim;

(l) the plaintiffs claim USD5,000 for daily onboard crew living expenses, paid to Maldives Yacht Support Pvt Ltd, as confirmed by a standard bank statement entry dated 31 July 2018, with no invoice issued for this payment;

(m) despite the defendant's reservations about these expenses, Lisa Powell's explanation that these were day-to-day living expenses for the crew, not wages, is persuasive. The court accepts that such expenses would be a necessary consequence of the vessel's extended stay in Male;

(n) the plaintiffs claim USD721.20 for Justin Hoye-House's flight expenses from Miami, USA to Cochin, India for emergency repairs, as shown by a Gulf Air booking and a bank statement entry from September 2018, and USD1,706.34 for Sean Griffin's multiple flights, as evidenced by a Standard Bank Statement from October 2018 covering routes from Indonesia to Singapore, Singapore to Cochin, and back, and then to Australia. The defendant argues that these expenses, related to an aborted arrangement, should not be claimable. However, Ronan's explanation that these costs were incurred in anticipation of continuing the voyage, which was later frustrated due to the vessel's condition, is reasonable. The court finds that these expenses were a direct consequence of the incident and are thus recoverable;

(o) the plaintiffs claim USD886.56 for flight expenses for crew member Philip Diebert, as confirmed by a Standard Bank Statement entry on 6 November 2018 for his Malaysian Airlines ticket departing from Malaysia. The defendant contends that these expenses would have been incurred irrespective of the vessel's condition. However, Ronan's explanation that the flight was necessitated by the vessel's immobilisation at Boustead Langkawi Shipyard is accepted. The expense is seen as a direct result of the incident; and

(p) The plaintiffs claim a total of USD23,900.36 for alternate accommodation and travel expenses incurred between 20 July 2018 and 4 October 2019 while the vessel was uninhabitable, covering various

hotel stays and USD1,803 for travel arrangements such as ferries and Eurotunnel trips, as evidenced by multiple bank statements and invoices. The defendant question the necessity of these expenses. Ronan's assertion that the uninhabitability of the vessel due to the incident necessitated alternative arrangements is found convincing. The court accepts that the plaintiffs were deprived of their usual residence on the vessel, making these expenses reasonable and foreseeable.

[366] In conclusion, the court finds the plaintiffs' clarifications and evidence on each disputed item of expense to be persuasive and reasonable. The evidence presented aligns with the logical consequences of the contaminated fuel incident, and The defendant's failure to adequately challenge key aspects of the plaintiffs' claims during cross-examination further reinforces the plaintiffs' position. Therefore, the court rules in favour of the plaintiffs for the claimed damages, accepting their explanations and evidentiary support over the defendant's objections.

Damages for loss of use

[367] The next item for consideration is the plaintiffs' the claim for damages for the loss of use of the vessel. The plaintiffs have claimed damages for the period from 20 July 2018–30 September 2019, a total of 63 weeks, asserting that the vessel was uninhabitable due to the fuel contamination. The claim is premised on the cost of chartering a substitute vessel, with weekly charter rates for a vessel of similar size and caliber estimated between USD18,900 to USD29,600.

[368] The court acknowledges the plaintiffs' position that the vessel, serving as a de facto home and a means for circumnavigation, was unusable for a significant period. The plaintiffs have attempted to mitigate their losses by not chartering a substitute vessel, which they argue would have been prohibitively expensive and logistically challenging, especially for the planned difficult passage through the Gulf of Aden and into the Red Sea and Mediterranean.

[369] However, the defendant contests the reasonableness of both the duration of the claimed loss of use and the method of calculating damages. They argue that the period of 63 weeks is excessive, noting that the vessel was in use for part of this time and that the repairs at Boustead Langkawi Shipyard, particularly the replacement of the Northern Lights Generator, could have been completed more expediently. Furthermore, they challenge the plaintiffs' approach of equating loss of use with the costs of chartering a replacement vessel, suggesting that this would result in the defendant paying more than the vessel's worth.

[370] In evaluating these submissions, the court finds merit in both parties' arguments. On one hand, the plaintiffs are entitled to compensation for the loss of use of their vessel. On the other hand, the court agrees with the defendant that the claimed period of 63 weeks is excessive and that the method of calculating damages based on the cost of chartering a replacement vessel is not reasonable in this context.

[371] Given these considerations, the court determines that a more equitable measure of damages is required. As per the principles established in *Beechwood Birmingham Ltd v Hoyer Group UK Ltd* [2011] QB 357 (English Court of Appeal), where no substitute vessel was hired, the damages should be calculated based on the interest on the capital value of the vessel. Using the capital value of USD800,000 as per Ronan's advertisement for the vessel's sale and applying an annual interest rate of 5%, the court finds it reasonable to award damages for the loss of use for a revised duration of 219 days.

[372] Therefore, the court awards damages for the loss of use of the vessel at USD24,000. This figure reflects a balanced consideration of the plaintiffs' loss and the need to avoid disproportionate compensation that would exceed the vessel's value. This aims to provide equitable redress to the plaintiffs while ensuring that the damages awarded are proportionate and grounded in legal precedent.

Assault on feelings, mental distress and anxiety, discomfort and inconvenience suffered

[373] In addressing the plaintiffs' claim for damages arising from assault on feelings, mental distress, anxiety, frustration, disappointment, discomfort, inconvenience, and loss of enjoyment, the court carefully considers the submissions presented by both parties. The plaintiffs contend that the contaminated fuel supplied by the defendant led to a high-risk situation at sea, causing significant trauma and distress, especially to Ronan, the Master of the vessel. The evidence presented, including testimonies from Ronan and Gunther, illustrates the severe emotional and psychological impact of the incident.

[374] The plaintiffs argue that the defendant, as a bunker supplier and a service provider to yachters, should have foreseen the potential for serious harm and distress resulting from the supply of contaminated fuel. This argument is substantiated by referencing the reasonable foreseeability of distress in cases of negligence or breach of contract in supplying clean, good quality fuel. The plaintiffs draw upon legal precedents, such as *Perry v Sidney Phillips & Son (a firm)* [1982] 3 All ER 705 (English Court of Appeal), *Heywood v Wellers (a firm)* [1976] 1 All ER 300 (English Court of Appeal), and *Jarvis v Swans Tours*

Ltd [1973] 1 All ER 71 (English Court of Appeal), to reinforce their claim for compensation for mental distress and inconvenience.

[375] Conversely, the defendant challenges the plaintiffs' claim, noting that the alleged PTSD was not professionally diagnosed and questioning the reasonableness of attributing such distress to the fuel incident. They reference *McGregor on Damages* by James Edelman (20th Ed) and *Watts and another v Morrow* [1991] 4 All ER 937 (English Court of Appeal) to argue that mental distress alone is insufficient to ground an action in tort and that damages for mental distress in contract cases are typically limited to cases where the contract's purpose is to provide peace of mind or enjoyment.

[376] Having considered these submissions, the court acknowledges the severity of the situation faced by the plaintiffs due to the defendant's breach of contract/negligence. The court accepts the plaintiffs' submission that it was reasonably foreseeable for the defendant, aware of the nature of yachts as pleasure crafts, that supplying contaminated fuel could cause significant distress and anxiety. The court, therefore, finds that the plaintiffs are entitled to compensation for the mental distress and inconvenience suffered.

[377] However, the court also takes into account the defendant's arguments regarding the quantification of such damages. It is noted that the claim for mental distress is not based on a diagnosed medical condition and that the contract at issue was primarily for the supply of fuel, not inherently for the provision of pleasure or peace of mind. Thus, while the plaintiffs are entitled to compensation, it must be proportionate and not excessive.

[378] Consequently, the court determines that a reasonable sum for damages under this head is RM10,000. This amount reflects a balance between the plaintiffs' legitimate claim for compensation for the distress and anxiety suffered and the need to ensure that such compensation is not disproportionately high considering the nature of the contract and the absence of a diagnosed psychological condition. This sum, therefore, represents a modest but fair compensation for the plaintiffs' loss of enjoyment and the mental distress endured due to the defendant's actions.

CONCLUSION

[379] In view of the court's findings above, the plaintiffs' claim is allowed as follows:

(a) damages of USD193,959.19 for all loss, expense and damage suffered by the plaintiffs as a result of the use of the contaminated fuel supplied by the defendant;

(b) damages of USD24,000 for the loss of use of the vessel, 'SV Binary Star' from 20 July 2018–30 September 2019;

(c) damages of RM10,000 for assault on feelings, mental distress, and anxiety, discomfort and inconvenience;

(d) interest on the judgment sum at the rate of 5%pa from the date of the writ until full realisation thereof; and

(e) costs of RM100,000 to the plaintiffs subject to allocator fees.

Plaintiffs' claim allowed with costs of RM100,000 to plaintiffs subject to allocator fees.

Reported by Dzulqarnain Ab Fatar